



Publicly Accessible Penn Dissertations

1-1-2016

No-Trespass Policies in Public Housing

Janet Weiner

University of Pennsylvania, weinerja@mail.med.upenn.edu

Follow this and additional works at: <http://repository.upenn.edu/edissertations>



Part of the [Urban Studies and Planning Commons](#)

Recommended Citation

Weiner, Janet, "No-Trespass Policies in Public Housing" (2016). *Publicly Accessible Penn Dissertations*. 2090.
<http://repository.upenn.edu/edissertations/2090>

This paper is posted at ScholarlyCommons. <http://repository.upenn.edu/edissertations/2090>
For more information, please contact libraryrepository@pobox.upenn.edu.

No-Trespass Policies in Public Housing

Abstract

Increasingly, public housing authorities (PHAs) are implementing “no-trespass” policies designed to combat crime by non-residents in their developments. These policies allow PHAs to develop “ban lists” of unwanted non-residents who may be cited for criminal trespass if found on PHA property. Implementation of such policies may conflict with resident’s rights to have visitors, and invitees’ rights to visit. The effects of these policies on crime, perceptions of safety, and associational rights are unknown. Through legal analysis and case studies of three PHAs—Yonkers, NY; Chester, PA; and Annapolis, MD—I investigate the impact of these policies on residents, PHA officials, project managers, police, and people who are banned. My findings suggest that a no-trespass policy, narrowly targeted and as part of a larger security strategy, can promote perceptions of safety among public housing residents. Strong, stable PHA management and a collaborative relationship with residents are key to successful implementation. With due process protections and clear procedures for assuring that tenants’ rights to have visitors are not violated, it can pass constitutional muster. Whether it is an effective, or cost-effective, form of crime control is very much in debate. Implemented in isolation, however, a no-trespass policy is not likely to be effective in reducing crime and promoting perceptions of safety, and runs the risk of being used to police residents, rather than to protect them. If the policy is not narrowly tailored, it can divide families unnecessarily and discourage familial ties that create stability in a community. No-trespass policies can be blunt weapons against crime that cast very wide nets over a community, restrict movement, and interfere with family relationships. Applied arbitrarily and targeted indiscriminately, these policies are not likely to be constitutional. PHAs should consider whether no-trespass policies are worth the considerable resources needed to implement and maintain them, and reassess how these policies fit the larger objective of fostering safe places in which to live and raise a family. Longer-term safety may be better served by developing residents’ human and social capital, and by providing social supports and services, rather than on banning criminals from PHA property.

Degree Type

Dissertation

Degree Name

Doctor of Philosophy (PhD)

Graduate Group

City & Regional Planning

First Advisor

Amy Hillier

Keywords

crime, public housing, trespass, zoning

Subject Categories

Urban Studies and Planning

NO-TRESPASS POLICIES IN PUBLIC HOUSING

Janet Weiner

A DISSERTATION

in

City and Regional Planning

Presented to the Faculties of the University of Pennsylvania

in

Partial Fulfillment of the Requirements for the

Degree of Doctor of Philosophy

2016

Supervisor of Dissertation

Amy Hillier, Associate Professor, City and Regional Planning

Graduate Group Chairperson

Eugenie Birch, Lawrence C. Nussdorf Professor of Urban Research & Education

Dissertation Committee (*Typed Names and faculty title; no signatures necessary*)

Amy Hillier, Associate Professor, City and Regional Planning

John Keene, Professor, City and Regional Planning

Eugenie Birch, Lawrence C. Nussdorf Professor of Urban Research & Education

NO-TRESPASS POLICIES IN PUBLIC HOUSING

COPYRIGHT

2016

Janet Weiner

This work is licensed under the
Creative Commons Attribution-
NonCommercial-ShareAlike 3.0
License

To view a copy of this license, visit

<http://creativecommons.org/licenses/by-nc-sa/2.0/>

Dedicated to my mother and father

ABSTRACT

NO-TRESPASS POLICIES IN PUBLIC HOUSING

Janet Weiner

Amy Hillier

Increasingly, public housing authorities (PHAs) are implementing “no-trespass” policies designed to combat crime by non-residents in their developments. These policies allow PHAs to develop “ban lists” of unwanted non-residents who may be cited for criminal trespass if found on PHA property. Implementation of such policies may conflict with resident’s rights to have visitors, and invitees’ rights to visit. The effects of these policies on crime, perceptions of safety, and associational rights are unknown. Through legal analysis and case studies of three PHAs—Yonkers, NY; Chester, PA; and Annapolis, MD—I investigate the impact of these policies on residents, PHA officials, project managers, police, and people who are banned. My findings suggest that a no-trespass policy, narrowly targeted and as part of a larger security strategy, can promote perceptions of safety among public housing residents. Strong, stable PHA management and a collaborative relationship with residents are key to successful implementation. With due process protections and clear procedures for assuring that tenants’ rights to have visitors are not violated, it can pass constitutional muster. Whether it is an effective, or cost-effective, form of crime control is very much in debate. Implemented in isolation, however, a no-trespass policy is not likely to be effective in reducing crime and promoting perceptions of safety, and runs the risk of being used to police residents, rather than to protect them. If the policy is not narrowly tailored, it can divide families unnecessarily and discourage familial ties that create stability in a community. No-trespass policies can be blunt weapons against crime that cast very

wide nets over a community, restrict movement, and interfere with family relationships. Applied arbitrarily and targeted indiscriminately, these policies are not likely to be constitutional. PHAs should consider whether no-trespass policies are worth the considerable resources needed to implement and maintain them, and reassess how these policies fit the larger objective of fostering safe places in which to live and raise a family. Longer-term safety may be better served by developing residents' human and social capital, and by providing social supports and services, rather than on banning criminals from PHA property.

TABLE OF CONTENTS

ABSTRACT.....	IV
TABLE OF CONTENTS.....	VI
LIST OF TABLES.....	VIII
LIST OF ILLUSTRATIONS.....	IX
PREFACE	X
CHAPTER 1. INTRODUCTION AND OUTLINE.....	1
Trespass and Zoning.....	2
Housing Authorities Adopt No-Trespass Policies	9
Policies on Trial	13
The Matter of Race	23
Summary and Outline	25
CHAPTER 2. APPROACH AND METHODS.....	26
CHAPTER 3. PUBLIC HOUSING, THEN AND NOW	36
CHAPTER 4. LEGAL ANALYSIS	44
CHAPTER 5. CASE STUDY: YONKERS, NY	61
The Policy.....	69
Site Visit	73
Conclusions	90

CHAPTER 6. CASE STUDY: CHESTER, PA.....	92
The Policy.....	102
Site Visit.....	104
Conclusions.....	118
CHAPTER 7. CASE STUDY: ANNAPOLIS, MD.....	120
The Policy.....	125
Site Visit.....	126
Conclusions.....	142
CHAPTER 8. COMPARATIVE ANALYSIS OF THE THREE CASE STUDIES	144
CHAPTER 9. CONCLUSIONS AND RECOMMENDATIONS	155
BIBLIOGRAPHY	160
APPENDICES.....	166

LIST OF TABLES

Table 1. Preliminary Research on Trespass and Ban Policies, 2011

Table 2. Present MHACY Properties

Table 3. Demographics of Yonkers and MHACY Residents, 2014

Table 4. MHACY Bar-Out Policy Offenses and Duration

Table 5. Present CHA properties

Table 6. Demographics of Chester and CHA Residents, 2014

Table 7. CHA Trespass Policy Offenses and Duration

Table 8. CHA Police Activity Log, 2011 and 2013

Table 9. Demographics of Annapolis and HACA Residents, 2014

Table 10. Present HACA properties

Table 11. HACA Trespass Policy Offenses and Duration

Table 12. Demographic Comparison among Case Cities

LIST OF ILLUSTRATIONS

- Figure 1. Location of MHACY Properties
- Figure 2. Calcagno Homes, Resident Entryway
- Figure 3. Calcagno Homes, Guard Booth
- Figure 4. Schlobohm Houses, Fencing
- Figure 5. Schlobohm Houses, Guard Booth
- Figure 6. Cottage Gardens, Courtyard View
- Figure 7. Cottage Gardens, No Trespass Signs
- Figure 8. Yonkers UCR Part I Annual Crime, 2005-2015
- Figure 9. Yonkers Violent Crime, By Precinct, 2005-2010
- Figure 10. Famous Illuminated Sign: WHAT CHESTER MAKES MAKES CHESTER
- Figure 11. Lamokin Village
- Figure 12. Chatham Estates
- Figure 13. CHA Main Offices and Senior Building
- Figure 14. Wellington Ridge
- Figure 15. Chester UCR Part I Annual Crime, 2005-2014
- Figure 16. People Cleared from Corners by CHA Police, FY 2011 and FY 2013
- Figure 17. Harbour House
- Figure 18. Eastport Terrace
- Figure 19. Eastport Terrace, vacant unit
- Figure 20. Annapolis UCR Part I Annual Crime, 2005-2014
- Figure 21. Annapolis Violent Crime, City, HACA, and Vicinity, 2012-2014

PREFACE

My interest in city planning evolved from my background in public health and career in health services research and policy. Although the ultimate goal of improving the health care system is to produce better health, it was clear to me (as it has been to many others) that the largest gains would come from addressing the socioeconomic determinants of health—“upstream” factors such as housing and neighborhood conditions. I was especially interested in policies and interventions that could address these factors in high-poverty, high-crime communities in inner cities in the U.S. The field of city planning, at its best, can help these communities envision and create conditions that promote their residents’ health and welfare. The field is broad enough to encompass the economic, racial, and social justice issues that underlie health disparities, and narrow enough to mediate conflict and balance competing priorities among community members.

In coursework, I was especially drawn to planning and environmental law, as a necessary framework for understanding how this burgeoning field had challenged and changed the status quo over the last century. From the earliest zoning cases to most recent cases on regulatory takings, planning law reflects city planning’s great “balancing act,” whether it be writ large in terms of constitutional rights, or writ small in terms of local zoning decisions.

My interests came together after reading “Property Rights, the First Amendment, and Judicial Anti-Urbanism: The Strange Case of *Virginia v. Hicks*”¹ in a course given by the article’s author, urban geographer Don Mitchell. Through the prism of one Supreme Court case, I could

¹ Mitchell, D., “Property rights, the First Amendment, and judicial anti-urbanism: the strange case of *Hicks v. Virginia*,” *Urban Geography*. 2006; 26:565-86.

see how many facets of city planning converge (and sometimes diverge) in the quest for safe and livable neighborhoods.

My motivations for this dissertation can be found in conflicting comments during the *Virginia v. Hicks* case, in which a visitor to a Richmond public housing project challenged his banning and subsequent trespassing convictions. Hicks was not a resident, but his mother, his child, and the mother of his child were. Richmond’s housing authority, like many others, had implemented a strict no-trespass policy in an attempt to combat open-air drug markets and deter violent crimes committed by non-residents.

In oral arguments before the Supreme Court, the state solicitor for Virginia began by stating, “Before this trespass policy took effect, the families in Whitcomb Court lived in the middle of an open-air drug market. Surely those who must rent from public housing ought not be required by the law to live in greater danger from criminals than those who rent from private landlords.”²

Later in the proceeding, Justice Ruth Bader Ginsburg commented that Richmond’s policy to privatize streets and ban anyone without a “legitimate business or social purpose” seemed functionally equivalent to a gated community. “You’re saying the public housing authority can’t create for people in the projects a gated community,” she said. “People who live outside can have it, but poor people can’t have it.”³

² No. 02-371, *Virginia v. Hicks*, oral arguments at 0:00:28.

³ No. 02-371, *Virginia v. Hicks*, oral arguments at 0:54:20.

However, the Richmond Tenants Organization and two other tenant groups (from Boston and Charlottesville) filed an amicus brief challenging this perspective on no-trespass policies.

They stated:

Inarguably, public housing residents should not have to tolerate dangerous and crime-ridden communities. Yet, it would be perverse to pursue the goal of crime prevention to the exclusion of all other rights and interests of public housing residents. The quality of residents' lives is comprised of a multitude of factors, not simply safety. Public housing residents, like those who live in private housing, can and should expect to be safe in their communities and to exercise their rights to live a “normal” life.⁴

This tension—among the legitimate safety concerns of residents, the security responsibilities of housing authorities, and the “normalcy” of having friends, family, and visitors in the home—lies at the heart of this dissertation. The topic is of more than academic interest to me; having grown up in public housing in the Bronx, I felt that I could bring an especially relevant perspective to the design and conduct of this research.

My initial questions focused on the effectiveness of no-trespass policies, from the perspectives of the various stakeholders. My goal was to combine a qualitative, case study approach with quantitative analysis of crime data from three sites. I conducted preliminary research (see Chapter 2) to get a sense of the prevalence and characteristics of these policies, and to select sites that illustrated a variety of policies. After reviewing 26 policies, I developed three categories of policies, based on how they defined legitimate visitors (and excluded others). I then picked sites from each category, expecting to study how the effectiveness of no-

⁴ 2002 U.S. Briefs 371; 2003 U.S. S. Ct. Briefs LEXIS 444

trespass policies differed by the width of the net cast around the property (and the size of the mesh in filtering out unwanted people).

But sometimes research leads you to places you did not expect to go, both literally and figuratively. For obvious reasons, I had wanted to use Richmond, Virginia, as one site; however, rapid leadership turnover (and ongoing lawsuits) made that impossible. More generally, address-level crime data over time proved difficult to obtain, limiting the quantitative aspect of this project. Even more importantly, I found that the policies-as-stated had little in common with the policies-as-enforced, and my categorization had little relationship to the policies as they were experienced. Instead, I found myself investigating how each site balanced the conflicting rights and responsibilities of the key parties (residents, visitors, and housing authorities) in the development and implementation of its no-trespass policy. In the course of that investigation, I discovered the historical and present-day context for these policies, without which they cannot be understood. For example, each site had a history of racial segregation and conflict that clearly affects how residents perceive housing and police authorities, and vice-versa. The Black Lives Matter movement, something that came up in my interviews, reflects this legacy in its present manifestation.

And so my research questions evolved from a rather straightforward analysis of the effectiveness of no-trespass policies on crime rates and safety to a more nuanced exploration of how the stakeholders perceive no-trespass policies and how the policies fit into the broader objective of having a safe place to live and to raise a family. My law professor and dissertation committee member John Keene suggested a three-part analytic framework by which to understand my findings across themes and cases, which I discuss in Chapter 2 and use in

Chapter 8. This framework, a three-legged stool upon which a healthy community rests, consists of security, pro-family supports for tenants, and pro-family supports for visitors. Achieving that balance is the challenge facing public housing authorities, tenants, and the courts. Assessing how no-trespass policies fit into this framework is the purpose of this dissertation.

Chapter 1. INTRODUCTION AND OUTLINE

As planners, we have a long and abiding interest in the development of safe and vibrant public spaces, the regulation of private property for the public good, and in the provision of affordable housing. Although these are often three distinct aspects of city planning, they coalesce around the issue of trespass and ban policies in public housing. These policies reflect a growing trend to combine the principles of zoning and trespass to exclude toxic “users” from certain spaces, much as early zoning was designed to separate toxic uses of space from non-toxic ones. They reflect a growing trend to privatize formerly public spaces, which has implications for constitutional rights and what Henri Lefebvre termed a “right to the city.”⁵ And these policies, because they are often targeted at the poor and minorities, present immediate concerns about fairness and equal protection.

This research seeks to understand the impact of these policies on the people directly affected by them: residents, housing authority officials, project managers, police, and people who are banned. The policies raise important constitutional concerns, which I analyze in Chapter 4. However, the central questions this dissertation address are not legal ones, but rather, empirical and normative ones: do trespass and ban policies “work” from the perspective of the people living and working with them, and do they provide an acceptable balance between residents’ rights to safe housing and residents’ rights to have visitors? Do they protect invitees’ rights to visit?

⁵ Mitchell, D., *The Right to the City: Social Justice and the Fight for Public Space*. New York, N.Y.: Guilford Press, 2003.

In the following section, I review how municipalities are creating zones of exclusion and using trespass policies to control crime in certain areas. These strategies are a new form of spatial regulation, and public housing authorities have been adapting it for their use.

Trespass and Zoning

Both common law trespass and zoning ordinances affect property rights, but they are designed to accomplish very different purposes. Traditionally, trespass protects a private property owner's right to exclude others, one of the "essential sticks" in the bundle of property rights.⁶ Zoning, on the other hand, regulates land use to safeguard and promote the health, safety, morals, and general welfare of the community. Combining the two enables a form of "people-based zoning" that makes a person's presence in a designated zone punishable as criminal trespass, if that person cannot demonstrate a legitimate purpose for being there. One commentator noted, "To be apprehended, the excluded individual need not engage in criminal activity, nor even be suspected of it. Rather, it is the individual's mere presence in a particular area that offends."⁷

Municipalities turned to no-trespass laws about 20 years ago out of a perceived gap in the ability of the criminal justice system to control crime and disorder adequately in high-crime areas. Police and area residents alike complained of a "revolving door" criminal justice system in which offenders (such as drug traffickers, prostitutes or unwanted vagrants) return to the same

⁶ *Kaiser Aetna v. United States*, 444 U. S. 164 (1979)

⁷ Flanagan, P., "Trespass-zoning: Ensuring neighborhoods a safer future by excluding those with a criminal past." *Notre Dame Law Rev.* 2003; 79:328–9.

neighborhoods within hours of their release after arrest.⁸ Two interrelated assumptions underlie these new policies: first, that certain areas possess spatial and social qualities making them particularly attractive to criminals; and second, that criminals are more likely to continue to commit the same crimes if allowed to return to the same areas. One way to disrupt crime patterns, then, is to exclude criminals and likely criminals from those areas. In effect, it redefines the control of disorderly people as an issue of movement and location.⁹ One commentator noted that a consequence of this redefinition is a shift from ex post determinations about what behaviors and which individuals threaten the public order (made by police) to ex ante determinations of who the disorderly are and where disorder is most harmful (made by planners, regulators, and lessors).¹⁰

Trespass and zoning policies can also be seen as a response to the invalidation of “loitering” and “vagrancy” statutes by the U.S. Supreme Court, which declared such laws unconstitutionally vague or overbroad in a series of cases.¹¹ In *Morales* (1999), for example, the Court stated that “the freedom to loiter for innocent purposes is part of the ‘liberty’ protected by the due process clause of the Fourteenth Amendment.”¹²

Portland, Oregon, and Seattle, Washington, were at the forefront of trespass-zoning through the creation of drug and prostitution-free zones and parks exclusions laws. In 1992, Portland established drug-free zones (DFZs) in designated high-crime areas. An arrest for drug

⁸ American Prosecutors Research Institute. *Community Prosecution: A Guide for Prosecutors*. Alexandria, Va.: American Prosecutors Research Institute, 1994.

⁹ Ellickson, R.C., “Controlling chronic misconduct in city spaces: Of panhandlers, skid rows and public space zoning.” *Yale Law J.* 1996; 105:1165-248.

¹⁰ Garnett, N.S., “Relocating disorder.” *Virginia Law Rev.* 2005; 9:1075-134.

¹¹ see *Papachristou v. Jacksonville*, 405 U.S. 156 (1972); *City of Chicago v. Morales*, 527 U.S. 41 (1999); *NAACP Anne Arundel County Branch v. City of Annapolis*, 133 F.Supp.2d 795 (D. Md. 2001).

¹² *City of Chicago v. Morales*, 527 U.S. 41 (1999)

crimes in a DFZ led to a civil exclusion (ordered by the arresting officer) from all DFZs for 90 days; subsequent conviction led to exclusion for one year. Violation of the exclusion order resulted in a charge of criminal trespass. In 1995, Portland applied the same concept in establishing prostitution-free zones: an arrest for prostitution led to a 90-day ban from the zones, and a conviction led to a year-long ban, which could be appealed to the city's Codes Hearing Officer. Throughout the next 15 years the boundaries of the zones would be redrawn, but the policy remained in effect. In 2007, the zoning ordinance was allowed to expire after a city-commissioned study found that DFZ exclusions were disproportionately enforced against African Americans and seemed to have little effect on crime. African Americans comprised more than 50% of all arrests for an excludable crime, even though they represented about 6% of Portland's population. And when they were arrested, African Americans were issued exclusions 68% of the time, while Whites who were similarly arrested were issued exclusions 54% of the time.¹³

Drug exclusion zones raise legal and ethical concerns. Like Portland, Cincinnati's drug-exclusion law banned all persons arrested for drug offenses from the "public streets, sidewalks, and other public ways" in the zone for 90 days; upon conviction, the exclusion was extended to one year.¹⁴ The Cincinnati ordinance was overturned by an appellate court in 2002, which determined that it violated state constitutional rights of association and rights to travel locally through public spaces and roadways.¹⁵ However, the US Supreme Court has not ruled on a right

¹³ Campbell Delong Resources, Inc., "An analysis of data relating to the City of Portland's drug free zone ordinance: Summary report." September, 2007. Retrieved from http://blogtown.portlandmercury.com/files/2007/09/CDRI_DFZ%20Report%20Sept%202007.pdf.

¹⁴ Cincinnati Municipal Code §755-5.

¹⁵ Johnson v. City of Cincinnati, 310 F.3d 484 (2002)

to intrastate travel,¹⁶ and state courts have been split on whether this right exists.¹⁷ Also, the Supreme Court of Oregon upheld Portland's prostitution exclusion zone, ruling that its civil penalties, followed by prosecution for the crime of prostitution, did not constitute double jeopardy.¹⁸

From 2005-2008, Charlotte, North Carolina, established a "prostitution exclusion zone" that specified a 90-day ban after a prostitution arrest within the zone and a year-long ban after a prostitution conviction. If the person is acquitted or the charges are dropped, the exclusion ends immediately. The city plans to reinstate the zone in 2015.¹⁹

Some municipalities extended the concept of trespass-zoning to their downtowns, to address business concerns about safety. Eugene, Oregon, designated much of its downtown an exclusion zone, but let its policy lapse in 2013 amidst concerns about due process and its targeting of homeless people. On the other hand, Bend, Oregon, recently voted to expand its parks exclusion zone to include much of its downtown, although it emphasizes that loitering and panhandling are not grounds for exclusion. Only certain crimes including assault, strangulation, and sexual offenses may result in a notice of exclusion.²⁰

In response to community and business perceptions that the expiration of DFZs had led to a return of drug crime, in June 2011 Portland established new "drug impact areas." The new

¹⁶ Wilhelm, K.E., "Freedom of movement at a standstill? Toward the establishment of a fundamental right to intrastate travel." *Boston U. Law Rev.* 2010; 90:2461-96.

¹⁷ Scharff, R.L., "An analysis of municipal drug and prostitution exclusion zones." *Geo. Mason U. Civ. Rts. Law J.* 2005; 15:321-40.

¹⁸ *State v. Lhasawa*, 55 P.3d 477 (Or. 2002)

¹⁹ Graham, D.A., "A no-go area for those arrested?" *The Atlantic*, October 15, 2015.

²⁰ Bend Chamber of Commerce. "Expanding the civil exclusion zone." 2015. Retrieved from <http://bendchamber.org/uncategorized/expanding-the-civil-exclusion-zone/>.

policy differs from DFZs in two important ways: first, judges, rather than police officers, issue exclusion orders as part of sentencing for a drug conviction (not for an arrest). People convicted of a drug offense found in drug impact areas after having been excluded do not get a trespassing citation, but instead are cited for a probation violation, with potentially more severe consequences. Interestingly, the person need not have committed the drug crime in an impact area to be subsequently excluded from the areas. The new policy addresses concerns about the lack of procedural due process in DFZ exclusions (police can no longer unilaterally issue exclusions) but it raises new concerns about the effectiveness and fairness of banning people from areas where they have not committed any crime. It has not been challenged in the courts, but may be on firmer legal ground because it shares many features with sex-offender residency restrictions, which establish an “exclusion zone” for convicted sex offenders around areas where children are found.²¹

Features of trespass and zoning also combine in parks exclusion laws, most notably in Seattle. In this case, the “zone” is not defined by high-crime areas; instead, it is defined by its nature as a public park. In response to a large and unwieldy street population, in 1997 Seattle implemented a widespread parks exclusion policy. Prior to its adoption, police could remove someone from a public park only if they had probable cause to believe that a crime had been committed. More minor rule violations, such as being in the park after closing time, resulted in a citation. Parks exclusion laws authorize police and parks officials to ban people for committing minor infractions (such as having an unleashed pet, camping, urinating, littering, or possessing an open container of alcohol) from one, some, or all city parks for up to one year (depending on

²¹ Tekle-Johnson, A., “In the zone: Sex offenders and the ten percent solution.” *Iowa Law Rev.* 2009; 94:607-63.

the number and type of violation). Although the parks exclusion ordinance is defined as civil and remedial rather than criminal and punitive in nature, a violation is typically a misdemeanor criminal offense.²² Seattle's policy states:

The Seattle Police Department, park rangers, and other designees of the Parks Superintendent will issue a warning to an individual who violates a parks rule, policy, local or state law. The warning applies to all parks properties and does not expire. The individual may be arrested and prosecuted for criminal trespass if the individual subsequently violates a park rule, policy, local or state law in a park. If an individual commits a weapons violation or a felony crime in a park, he or she may be excluded from that particular park zone for one year. If an individual demonstrates conduct in a park or Parks facility that is a threat to public safety, the officer may exclude that person from that specific park or facility for the remainder of the day. The individual may be arrested and prosecuted for criminal trespass if the individual enters/remains in the park or park zone from which he or she has been previously excluded during the period of time for the exclusion.²³

Seattle has also been at the forefront of enhancing ways to use trespass to limit access to private property that is open to the public. Until 2011, its trespass program granted police officers the authority to issue civil "trespass admonitions" through a contract with property owners that allows police to act as agents of the property owner. Officers could issue trespass admonitions whenever they saw an individual "without legitimate purpose" on properties usually open to the public. These admonitions prohibited a person from being on a certain property or group of properties for an extended period of time, typically one year. The program allowed similar businesses to form groups (such as downtown parking lots) and to exclude a person from all properties within the group, even if the properties were geographically separated. Unlike DFZs or parks exclusions, these trespass admonitions required no evidence of

²² Beckett, K., Herbert, S., "Dealing with disorder: social control in the post-industrial city." *Theoretical Criminology*. 2008; 12:5-30.

²³ Seattle City Trespass Program FAQ, 2013. Retrieved from <http://www.seattle.gov/cityattorney/about-us/precinct-liaison-division/trespass-program>.

criminal conduct or wrongdoing, either in the past or present; the “no legitimate purpose” standard applied to everyone but paying customers. The banned person had no opportunity to contest his or her exclusion.

In 2010, Seattle settled a federal lawsuit in which a street vendor contested his exclusion from the sidewalk in front of a bank.²⁴ As part of the settlement, the Seattle Police Department issued a clarification that stated that the private property trespass admonition program “does not apply to public rights-of-way. Officers are not authorized under this program to...exclude a person from any public-right-of-way including sidewalks.”²⁵ Applying this program to sidewalks would have led to conflicts with the Supreme Court’s decisions on loitering and vagrancy. Subsequently, Seattle significantly revised its trespass admonition program in 2011. Officers are no longer authorized to issue trespass admonitions on their own. Property owners now post “Conditions of Entry” signs that specify legitimate uses of the property (for example, “patrons and customers only”) and sign up with the police to authorize them to issue trespass warnings in the property owner’s absence. The trespass admonition can last indefinitely, but the person can return the next day if he or she fulfills the conditions of entry (i.e., becomes a paying customer). And the admonition covers only the specific address, rather than groups of businesses.

Madison, Wisconsin, recently expanded a similar program among business owners. The so-called “Collective Community Ban Program” encourages merchants to sign up to allow the police to impose and enforce a one-year exclusion, triggered by the arrest of a person on private property, from the property of all participating merchants. Offenses can include, but are not

²⁴ Loper v. City of Seattle, filed June 11, 2010, settled December 10, 2010.

²⁵ Harris, T., “Settlement challenges Seattle police banishment practice.” 2010, Retrieved from <http://realchangenews.org/2010/10/27/settlement-challenges-seattle-police-banishment-practice>.

limited to, retail theft, liquor law violations, disorderly conduct, battery, depositing human waste, trespassing, theft, burglary and weapons violations. Any criminal charge and violation of most city ordinances can result in application of this ban.²⁶

Housing Authorities Adopt No-Trespass Policies

The most enthusiastic adopters of trespass and ban policies are public housing authorities (PHAs), who have turned to trespass and banning strategies to fight drug crime. Most would agree that some public housing developments are “zones” of high crime and drug violence. Like all landlords, PHAs have the right to exclude non-residents from their property. But public housing tenants, like any other tenants, have the right to have visitors. The widespread use of no-trespass policies has raised significant questions about the rights and responsibilities of PHAs, tenants, and visitors, made more poignant by the inherent vulnerability of poor populations in public housing, which often constitutes the only affordable housing in many municipalities.

Since the 1970s, a picture has emerged of public housing projects as extremely dangerous and violent places, with residents beset by uncontrolled gun violence and rampant drug crimes. Much of this picture came from journalistic narratives that generalized the worst of public housing at its worst time—such as St. Louis’ Pruitt-Igoe and Chicago’s Cabrini-Green—to represent all public housing. For many years, public housing has been “tarred with the exceptional image”²⁷ of crime-ridden, drug-infested, crumbling high-rises. Months after Pruitt-

²⁶ City of Madison. Collective Community Ban Program, 2014. Retrieved from <https://www.cityofmadison.com/news/collective-community-ban-program>.

²⁷ Henderson, A.S., “‘Tarred with the exceptional image’: Public housing and popular discourse, 1950-1990.” *American Studies*. 1995; 36:31-52.

Igoe had been demolished, architect Oscar Newman published an influential book, *Defensible Space: Crime Prevention Through Urban Design*, in which he concluded that the design of the high-rises was criminogenic; large, anonymous public spaces discouraged residents from taking responsibility for and protecting these areas. As Newman stated, “It is the apartment tower itself which is the real and final villain.”²⁸ Newman’s theories of the fatal design flaws in high-rise public housing remain highly influential, although Newman himself incorporated social factors into his later writings.²⁹ Others have noted that Newman ignored a major factor, lurking in his regression tables but not considered, which was the high ratio of children to adults.³⁰ Recently, scholars and commentators have begun to challenge narratives of inevitable decline, architectural determinism, and rampant criminality that have shaped earlier accounts and still dominate public perception.³¹

This portrait has influenced public opinion and policy about public housing. At its height, public housing had more than 1.4 million units. But only a fraction of them fit the prevailing image; HUD stopped building high-rises in 1968, except for the elderly.³² In 1989, the National Commission on Severely Distressed Public Housing estimated that 86,000 units (6% of the nation’s public housing stock) were severely distressed. Congress responded with the HOPE VI program, which funded the demolition of more than 150,000 public housing units between 1993

²⁸ Newman, O. *Defensible Space: Crime Prevention through Urban Design*. New York, N.Y.: Collier Books, 1973.

²⁹ Newman, O. *Creating Defensible Space*. Washington, D.C.: U.S. Dept. of Housing and Urban Development, Office of Policy Development and Research, 1996.

³⁰ Bloom, N., Umbach, G., Vale, L., Heathcott, J. (Eds.), *Public Housing Myths*. Ithaca, N.Y.: Cornell University Press, 2015.

³¹ Ibid.

³² Henderson, A.S., “Tarred with the exceptional image: Public housing and popular discourse, 1950-1990.” *American Studies*. 1995; 36:31-52.

and 2006.³³ Today, less than one-quarter of 1.1 million public housing units that remain are high-rises.

A 2000 HUD report claimed that public housing residents were twice as likely as others to be shot, and that 1 in 100 residents had been victims of gun-related violence.³⁴ This oft-cited statistic has been challenged by the Council of Large Public Housing Authorities as methodologically flawed³⁵ and by some public housing advocates as a skewed view of life in the projects. But there is little doubt that many public housing projects are located in dangerous neighborhoods, and that some projects can be particularly dangerous places within these neighborhoods. One study of three PHAs found that public housing residents were 1.6 to 3.8 times as likely to be victims of aggravated assaults as other city residents, and 1.2 to 1.8 times as likely as residents in a 300-meter buffer zone around the projects.³⁶ One problem with using victimization data is that they reflect the life experiences of the residents, rather than the characteristics of the physical space.

In 1988, Congress authorized funds for the Public Housing Drug Elimination Program (PHDEP), which provided grants to PHAs to support their anti-drug and anti-crime efforts. Using PHDEP funds, PHAs hired security personnel and instituted other policies designed to reduce crime, such as reimbursing local law enforcement agencies for additional security, and using

³³ Schwartz, A.F., *Housing Policy in the United States*, New York, N.Y.: Routledge, 2010.

³⁴ U.S. Department of Housing and Urban Development, *In the Crossfire: The Impact of Gun Violence on Public Housing Communities*. Washington, DC: 2000.

³⁵ Council of Large Public Housing Authorities, "CLPHA takes aim at HUD report on gun violence in public housing." March 9, 2000. Retrieved from <http://www.clpha.org/page.cfm?pageID=361>.

³⁶ Holzman, H.R., Hyatt, R.A., Kudrick, T.R. "Measuring crime in an around public housing using GIS." *Geographic Information Systems and Crime Analysis*, 2005:311-29.

security devices such as cameras and fences. Although the PHDEP was defunded in 2002, the anti-crime policies remain intact and are funded out of PHAs' general operating budget.

To fight drug crime, in 1996 HUD instituted a "one-strike" policy, allowing PHAs to evict tenants for just one drug offense committed by any household member, even if the offense was off-site. Eviction can occur after an arrest, regardless of the outcome of the criminal proceedings. In 2002, the Supreme Court upheld the constitutionality of this provision.³⁷ I discuss this case in Chapter 4. However, PHA managers noted that most people arrested for drug crimes on public housing property were not residents, and were not susceptible to "one-strike" provisions. Enhancements to trespass law offered PHAs a way to remove and ban unwanted non-residents.

Thus, PHAs increasingly instituted and enforced no-trespass policies to control access to public housing property. Although the details of each policy vary, the goal was to exclude non-residents who were threatening the safety of residents and the security of the developments. Many PHAs now produce "ban lists" that subject certain individuals to criminal trespass charges if they are found on PHA property. A distinct feature of these lists is that they ban certain individuals not only from a certain space, but for extended periods of time (in some cases, permanently).³⁸ The following section discusses the particular concerns that arise in this application of trespass policies.

³⁷ Department of Housing and Urban Development v. Rucker, 535 U.S. 125 (2002)

³⁸ Beckett, K., Herbert, S., "Dealing with disorder: Social control in the post-industrial city." *Theoretical Criminology*. 2008; 12:5-30.

Policies on Trial

Trespass law is grounded in the fundamental right of private property owners to exclude. Of course this right is not absolute, and in the case of rental property, is conditioned on lease agreements and tenants' rights of association. In the case of public housing, HUD requires that PHAs allow for reasonable accommodations of guests.³⁹ For example, federal courts have found that requiring public housing residents to obtain prior approval for visitors violated constitutional rights of privacy and freedom of association.⁴⁰ A number of state courts have held that an invited guest cannot be convicted of trespassing even if previously banned from the development, as long as the visitor stays within the scope of the invitation and does not engage in any illegal activity.⁴¹

Although PHAs are not private entities, they have landlord functions and responsibilities. They are mandated, by law, to provide a safe environment for their residents, and that mandate is one motivator of no-trespass policies. Typically, these policies provide for charging certain individuals with criminal trespass if found on public housing property after having been given a written warning by PHA personnel or local police officers acting on the PHA's behalf.⁴² A 2003 survey found that 287 out of 338 responding PHAs had adopted a no-trespass policy, and virtually all of them stated that they had adopted the policy to protect residents from crime or

³⁹ 24 C.F.R. § 966.4 (d).

⁴⁰ Beck, G.A. "Ban lists: Can public housing authorities have unwanted visitors arrested?" *U Ill Law Rev.* 2004; 5:1223-60; see *Lancor v. Lebanon Hous. Auth.*, 760 F.2d 361, 362 (1st Cir. 1985); *McKenna v. Peekskill Hous. Auth.*, 647 F.2d 332, 335 (2d Cir. 1981).

⁴¹ "No Trespass Policies: Hicks and its Aftermath." *Housing Law Bulletin*, July 2004; see: *City of Bremerton v. Widell*, 51 P.3d. 733 (Wash.), *cert. denied*, 537 U.S. 1007 (2002); *L.D.L. v. State*, 569 So. 2d 1310, 1312-13 (Fla. Dist. Ct. App. 1990)

⁴² Council of Large Public Housing Authorities et al. Amicus Brief, *Commonwealth of Virginia v Hicks*, No. 02-371, 2003.

illegal drugs.⁴³ “Without such policies, PHAs must, in their crime control efforts, rely entirely on catching criminal offenders in the act—even those who have a record of past offenses on housing authority property—on each and every occasion. Given the resources available to most PHAs, their ability to carry out security measures in this fashion is...limited.”⁴⁴

Although most no-trespass policies are confined to existing PHA property and grounds, a few municipalities have conveyed public streets and sidewalks to PHAs to give those agencies the right to exclude certain individuals from formerly public streets.⁴⁵ The argument for increased privatization is both practical and legal. On a practical level, PHAs feared that no-trespass policies would be less effective if banned individuals could simply step onto an adjoining public street to avoid arrest for trespassing. On a legal level, privatizing streets allowed PHA security personnel or police (as their agents) to stop a suspect without violating Fourth Amendment guarantees against unwarranted search or seizure. On public streets, officers would likely need to have “reasonable suspicion” to demand to see identification, and they would not usually be able to charge otherwise law-abiding citizens with trespassing.⁴⁶ Whether this is a feature to be admired or feared is a matter of some debate, some of which arose when Richmond, Virginia found its no-trespass policy challenged in court.

In 1997, Richmond transferred the deed to streets in and surrounding public housing projects to the Richmond Redevelopment and Housing Authority (RRHA). The move was

⁴³ Council of Large Public Housing Authorities et al. Amicus Brief, *Commonwealth of Virginia v Hicks*, No. 02-371, 2003.

⁴⁴ *Ibid.*

⁴⁵ Mitchell, D., “Property rights, the First Amendment, and judicial anti-urbanism: the strange case of *Hicks v. Virginia*.” *Urban Geography*. 2005; 26:565-86.

⁴⁶ Barbrey, J.W., “Measuring the effectiveness of crime control policies in Knoxville’s public housing.” *J Contemp Criminal Justice* 2004; 20:6-32.

designed to combat drug dealing in certain RRHA developments, which were described as an “open-air drug market.” The RRHA then posted “No Trespassing: Private Property” signs, although it still permitted traffic through the newly privatized streets. A new no-trespass policy was implemented, which made it illegal for any person, other than a resident or RRHA employee, to enter past the signs without a “legitimate business or social purpose.”

In 1998, Kevin Hicks was barred from RRHA property, where his mother and children lived. He was arrested for trespassing three times, convicted, and sentenced to one year in jail. The details of the Hicks case and its journey to the Supreme Court have been reported extensively elsewhere,⁴⁷ and I discuss it in Chapter 4. A unanimous Supreme Court decided the case on narrow First Amendment grounds, finding that Hicks’ rights of free expression had not been violated.⁴⁸ The Court reasoned that Hicks had not been banned for expressive activity, nor was there any evidence that the no-trespass policy was being used to ban protected speech. His arrest and conviction stemmed from the violation of trespass law. The case, however, did not settle the issue of whether privatization of streets could violate guaranteed rights to freedom of expression or freedom from unreasonable searches. The Court left open the possibility that such policies could be challenged on due process or other grounds. Upon remand, however, the Virginia Supreme Court upheld the policy, specifically refusing to apply the *Morales* precedent to this case. It reasoned that, unlike the anti-gang ordinance in *Morales*, the no-trespass policy was not vague, the non-resident had adequate warning, and the violation occurred on the “Housing Authority’s privately-owned real property,” where no right to loiter exists.⁴⁹

⁴⁷ Mitchell, D., *The Right to the City: Social Justice and the Fight for Public Space*. New York, N.Y.: Guildford Press, 2003.

⁴⁸ *Virginia v. Hicks*, 539 U.S. 113 (2003)

⁴⁹ *Commonwealth of Virginia v. Hicks*, 267 Va. 573 (2004)

Richmond, Virginia, Portsmouth, Virginia, Knoxville, Tennessee, and Chattanooga, Tennessee, have conveyed all or parts of streets to their PHAs. Knoxville's policies were upheld upon appeal in 2001,⁵⁰ although a 2006 appellate court ruled that a police traffic stop to check identifications on a street ceded to the Chattanooga PHA constituted a violation of state and U.S. Constitutional protections against unreasonable searches and seizures.⁵¹ In this case, the court found that a police officer's check of housing authority ID, coupled with checks of driver's licenses and insurance information, went far beyond the stated purpose of reducing crime and excluding trespassers. "In their zeal to preserve and protect, however, our police officers must respect the fundamental constitutional rights of those they are sworn to serve. Entry identification checkpoints of the type used here result in the abrogation of one of those fundamental constitutional rights."⁵²

Trespass policies differ across PHAs. The 2003 study revealed that the length of bans varied from 60 days in the District of Columbia to permanent bans in Richmond. Appeal rights varied as well, for both the banned individual and the resident who might be affected. Grounds for banning differ, from the broad "anyone without legitimate business or social reasons" in Richmond to individuals arrested for drug violations (whether on PHA property or not) in New York City.

After the Richmond Supreme Court decision, the Housing and Development Law Institute developed a model "Limited Access and Barring" policy.⁵³ The model policy has sections on

⁵⁰ Thompson v. Ashe, 250 F.3d 399 (6th Cir. 2001)

⁵¹ State of Tennessee v. Hayes, 188 S.W.3d 505 (2006)

⁵² State of Tennessee v. Hayes, 188 S.W.3d 505 (2006)

⁵³ Housing and Development Law Institute. Model Limited Access and Barring Policy. 2004. Retrieved from <http://www.hdli.org>

legitimate and illegitimate purposes for being on Housing Authority property, “barment” procedures such as notice to trespasser and to tenant, maintenance and display of barment list, and process for contesting the barment and for removal from the list. Additionally, it delineates the need for a memorandum of understanding with the specific security/police force in charge of enforcing the policy, naming a specific Trespass Coordinator to assure proper implementation of the policy, and appropriate signage to communicate the terms of the policy to both residents and non-residents. The stated goal of the model policy is to develop a trespass policy that “effectuates” the PHA’s mission “while permitting constitutionally protected expression,” a direct response to some of the First Amendment issues raised in the Richmond case.

A critical question in any analysis of trespass-zoning policies is simply, “Do they work, in reducing crime?” Although many proponents suggest large decreases in crime after implementation, they rarely account for secular trends, or adjust for possible confounding factors. Charlotte police credit the prostitution exclusion zone for a 34% drop in calls for service relating to prostitution and a 54% drop in prostitution arrests within the first four years.⁵⁴ But a descriptive police study of Eugene’s Downtown Public Safety Zone found no significant changes in arrests, 9-1-1 calls, or reported crime in the first two years of implementation (2008-2010).⁵⁵ Richmond claimed that violent crime rates decreased from 2.4 to 2.1 per month in the 19 months after implementation of the RRHA’s no-trespass policy.⁵⁶ Richmond also claimed that crime rates overall rose 20% after the policy was suspended (temporarily) in 2002. Other cities

⁵⁴ Graham, D.A., “A no-go area for those arrested?” *The Atlantic*, October 15, 2015.

⁵⁵ Eugene Police Department. Downtown Public Safety Zone Activity Report. August 17, 2010. Available at: http://www.eugene-or.gov/portal/server.pt/gateway/PTARGS_0_2_360267_0_0_18/DPSZ%20Review_08-18-10FINAL.pdf

⁵⁶ City of Richmond et al. Amicus Brief, Commonwealth of Virginia v. Hicks, No. 02-371. 2003.

have reported extremely large decreases in public housing crime and ascribe the results to no-trespass policies: Knoxville (which also privatized streets to the PHA), a 29% reduction in one year; Roanoke, Virginia, a 50% reduction.⁵⁷ The Annapolis (Maryland) housing authority reported a drop from 500 to 161 crimes per year after implementing ban list procedures.⁵⁸ These claims, and the attribution to no-trespass policies, must be viewed with some skepticism, because of the magnitude of the reductions and failure to account for other factors (such as coincident security measures and general crime trends).

Only one study of no-trespass policies compared public housing crime data with city-wide trends. A study of Knoxville found that serious crime incidents were only minimally affected by a package of PHA policies that included no-trespass, a “one-strike” eviction policy, a new applicant screening process, and demolition of one housing project.⁵⁹ From 1996-2001, the annual rate of aggravated assaults remained basically unchanged in public housing (although fluctuating a great deal from year to year) even though it remained nearly five times as high as the remainder of Knoxville.

It is worth discussing how a no-trespass policy might reduce violent crime. It might work simply because the “No Trespass” signs discourage all non-residents (including those with criminal intent) from entering public housing property. This overall “chilling effect” would be the functional equivalent of isolating public housing residents, and raises issues of fairness.

Alternately, the policy might work because trespass citations and ban notices are issued to

⁵⁷ Beck, G.A., “Ban lists: Can public housing authorities have unwanted visitors arrested?” *U Ill Law Rev.* 2004; 5:1223-60.

⁵⁸ *Ibid.*

⁵⁹ Barbrey, J.W., “Measuring the effectiveness of crime control policies in Knoxville’s public housing.” *J Contemp Criminal Justice.* 2004; 20:6-32.

people with criminal intent, and discourages them from entering public housing property to commit crimes. In that case, it might serve the purpose of displacing violent crime from public housing sites to other sites in the same neighborhood or to another nearby neighborhood. Alternatively, the policy might work because it allows police to identify and arrest repeat offenders for trespass violations, thereby interrupting the criminal process without actually interrupting a violent crime. If criminals are jailed (for trespass violations or other crimes coincident with a trespass arrest), violent crime would be reduced in public housing without necessarily displacing it elsewhere.

It is also important to consider whether no-trespass policies have an effect on *perceptions* of crime and safety, which has been shown to be independent of crime itself and independently related to quality of life.⁶⁰ No study has looked at the effects on residents' or managers' perceptions of crime and safety.

Beyond the empirical question of whether these policies reduce crime and perceptions of crime and safety, there remains the normative question of whether these policies are fair. Any normative analysis of no-trespass policies must acknowledge the inherent vulnerability of public housing residents, who are all poor and mostly minorities (48% black, 23% Latino). Proponents of these policies in public housing, however, argue that the policies are fair because they give the poor a right the rich have long had: to keep loiterers, and potential criminals, out of their homes.⁶¹ In oral arguments in *Hicks v. Virginia*, the counsel for Virginia argued, "Before this trespass policy took effect, the families in Whitcomb Court lived in the middle of an open-air

⁶⁰ Owens, A., "Perceptions of disorder, violence, and safety amid the transformation of assisted housing." *Cityscape* 2013; 15:78-103.

⁶¹ Greenhouse, L., "First amendment argument is made in trespass case." *New York Times*, June 17, 2003.

drug market. Surely those who must rent from public housing ought not be required by the law to live in greater danger from criminals than those who rent from private landlords.”

As noted before, Justice Ginsburg observed that the Richmond policy was the equivalent of creating a gated community, and questioned why poor people should not have what people outside public housing could have.⁶² Unlike residents of gated communities, however, public housing residents rarely have other housing options. Given the lack of affordable housing, proponents cite another advantage of no-trespass policies: they offer a more humane alternative to evicting tenants (under one-strike) who have offending visitors or relatives.⁶³

No comprehensive study exists of public housing residents’ views of no-trespass policies. However, an amicus brief by a number of local and national tenants organizations in the Richmond case stated that such governmental intrusion, “would not be tolerated in any other Virginia neighborhood, and this Court should likewise find it intolerable in public housing.”⁶⁴ In another high-profile case, a class action suit was filed in 2010 against New York City and its housing authority for its aggressive use of so-called vertical sweeps, in which New York City police patrol public housing buildings floor-by floor. The suit alleged that public housing tenants and their visitors were subject to police aggression and unwarranted trespass arrests for mundane activities like talking in the hallways or dropping off children.⁶⁵ According the NAACP’s Legal Defense Fund, the number of trespassing arrests in public housing in New York rose to

⁶² Nelson, R.H., “New community associations for established neighborhoods.” *Rev of Policy Research*. 2006; 23:1123-41.

⁶³ Council of Large Public Housing Authorities, Amicus Curiae Brief, Commonwealth of Virginia v Hicks.

⁶⁴ Richmond Tenants Organization et al. Amicus Brief, Commonwealth of Virginia v Hicks, No. 02-371, 2003.

⁶⁵ Buckley C. “Lawsuit takes aim at trespassing arrests in New York public housing,” *The New York Times*, January 26, 2010.

5,841 in 2008, from 4,275 in 2004, a 37% increase. In a particular tragic consequence of this policy, in November 2014, a New York policeman shot and killed an unarmed visitor during a routine vertical sweep of a public housing project stairwell in Brooklyn (that officer has been charged with second-degree manslaughter, criminally negligent homicide, assault, reckless endangerment, and two counts of official misconduct, and awaits trial).⁶⁶ The class-action suit was settled in January 2015, requiring the police department to revise its patrol guide to clarify when officers should simply leave residents alone, and requiring new documentation when police make arrests for trespassing.⁶⁷

The New York suit brings up the likelihood that resident reaction to these policies is based more on the way a policy is implemented than on what it actually says. Trespass and ban policies rely on the ability of police or security officials to identify who is legitimately on the property, and who is not. Some PHAs have issued resident identification cards to help police make this distinction. Recently, the Anniston, Alabama, Public Housing Authority issued photo ID cards and car decals to its more than 1,000 residents. According to a PHA official, people without an ID card or those who are not guests of a specific public housing resident will be asked to leave.⁶⁸

In New York, residents complained that the trespass laws were being implemented to police them, rather than to protect them. They complained that officers used a vague housing

⁶⁶ Debucquoy-Dodley, D., Almsy, S., "Akai Gurley case: NYPD officer charged with manslaughter, other counts." February 12, 2015. Retrieved from <http://www.cnn.com/2015/02/11/us/new-york-gurley-shooting/>

⁶⁷ Legal Aid Society. Davis settlement. Retrieved from <http://www.legal-aid.org/en/criminal/criminalpractice/davissettlement.aspx>

⁶⁸ McCreless, P., "Anniston Housing Authority to issue ID cards to residents." September 3, 2014. Retrieved from http://www.annistonstar.com/news/anniston-housing-authority-to-issue-id-cards-to-residents/article_51e6b0ba-33cf-11e4-92c4-001a4bcf887a.html

authority rule against “lingering” in the lobbies and stairwells of public housing buildings to stop them and sometimes arrest them without cause.⁶⁹ “Lingering” was often used as a basis for the initial interaction that resulted in an arrest, even though alone it would not provide a constitutional basis for a stop. (Lingering differs from the penal law violation of loitering, which applies only in a public place, though officers and residents often use the terms interchangeably.⁷⁰)

So that brings us full circle, back to the consideration of trespass-zoning laws as a response to the overturning of anti-loitering laws of the past. Combatting crime through zones of exclusion (from public spaces or private property open to the public) takes on heightened importance when that private property is a rental home, and when the landlord is a public housing authority. Residents have a dual interest in being (and feeling) safe in their homes and on the PHA grounds, and in having guests in their homes. PHAs have a dual obligations to provide safe housing and to impose reasonable lease requirements. The application of trespass-zoning policies to public housing poses particularly vexing questions that can only be answered by understanding how the rules are experienced by the people who must implement them and live by them. One commentator noted that such policies may have “unpopular” results such as increased police interaction and questioning of residents and their guests, which may be “inconvenient” and “unsettling” to some.⁷¹ Notably, the same commentator acknowledged that police interactions with residents might intrude on some basic privacy rights, which may be at

⁶⁹ Mueller, B., and Goodman, J.D., “New York to settle suit on policing in public housing.” *New York Times*, January 8, 2015.

⁷⁰ Ibid.

⁷¹ Lazarus, D.G., “Here comes the neighborhood—Virginia v. Hicks and how the New York Legislature should empower law enforcement with more powerful trespass-barment statutes as a tool to combat crime in public housing projects.” *Seton Hall Legislative J.* 2004; 29:315-27.

odds with Supreme Court affirmations of the importance of protecting the privacy interest in the home. Is this a necessary or acceptable trade-off between rights and protection? Is this a question, as one commentator suggests, of a “cost of rights” problem, in that racial justice and civil liberties concerns may doom effective strategies to create safe environments for the most vulnerable citizens?⁷² Or is it the case that the state is creating different regimes of private property and exclusion to provide a zone of protection from the obligation to guarantee rights such as due process and freedom of association, regimes that primarily affect public housing residents?

The Matter of Race

Police actions in minority communities and interactions with minorities, especially African Americans, have a long and troubled history that continues to the present day. Unequal treatment of minorities by law enforcement officials takes many forms, from pretextual traffic stops (“driving while black”), to stop-and-frisk tactics popularized in New York City, to police killings of young black men that gave rise to the movement, Black Lives Matter. Trespass and zoning policies, particularly as applied in public housing, have the potential to exacerbate existing tensions if they target and criminalize minorities. Implementation of no-trespass policies in public housing occurs against a backdrop of widespread suspicion of police in the African-American community, and increasing coverage of police brutality against African Americans.

⁷² Garnett, N.S., “Relocating disorder.” *Virginia Law Review*. 2004; 9:1075-134.

The Portland experience with drug-free zones illustrates the danger that such policies will be disproportionately enforced against African Americans. The study that led to the end of the DFZ there found that overwhelmingly, the police were familiar with the people they were excluding and that the majority were African Americans, leading one newspaper to call DFZs “Black Exclusion Zones.”⁷³ In the lawsuit against the no-trespass policy in New York City public housing, the NAACP Legal Defense and Education Fund asked:

*Are residents of public housing in New York City entitled to be free from police harassment in their homes just like other New Yorkers? Can they be stopped or arrested without regard for their rights? Has NYC criminalized traveling home or visiting a friend while black or brown?*⁷⁴

The specter of racism is raised on multiple levels in the adoption and implementation of no-trespass policies. Sociologists Robert Sampson and Stephen Raudenbush note that race, as a statistical marker of crime and disorder, stigmatizes not only individuals but the places in which they are concentrated.⁷⁵ Public housing is one such stigmatized space, opening the door to policies that may violate constitutional protections in an effort to quell the perceived chaos.⁷⁶ However, many researchers have found that outsiders (a group that includes police officers) perceive more neighborhood crime and disorder than do the public housing residents themselves.⁷⁷ This racial dynamic may lend itself to a mismatch between the extent of the problem, and the nature and severity of the solution.

⁷³ Moore, S., Davis, M., “Black exclusion zones: Are drug-free zones targeting African Americans?” March 8, 2007. Retrieved from <http://www.portlandmercury.com/portland/black-exclusion-zones/Content?oid=273589>

⁷⁴ Legal Defense Fund. Case: Davis v. City of New York. January 29, 2010. Retrieved from <http://www.naacpldf.org/case/davis-vs-city-new-york>

⁷⁵ Sampson, R., and Raudenbush, S., “Neighborhood stigma and the perception of disorder.” *Focus*. 2005; 24:7-11.

⁷⁶ Carlis, A., “The illegality of vertical patrols.” *Columbia Law Rev.* 2006; 109:2002-09.

⁷⁷ Ibid.

Further, race relations may hinder implementation of no-trespass policies, because their effectiveness depends heavily on cooperation from the residents themselves. If frequent police stops and questions are perceived as harassment—as alleged in New York—they may exacerbate longstanding distrust of police and cynicism about the fairness of the criminal justice system.

Summary and Outline

This review presents the context for this dissertation. It describes strategies based on a combination of trespass and zoning that are used to control crime and disorder in urban areas. It highlights programs in which civil exclusion orders are used to define unacceptable “users” of urban spaces, both public and private. It describes the application of these principles in public housing, where no-trespass policies may bring safety and rights of association into conflict, and exacerbate longstanding racial tensions. It delineates the gaps in what we know about the effects of these policies on the lives of public housing residents and on crime. It sets the stage for the research presented here.

The dissertation is organized as follows: in Chapter 2, I lay out my research design and summarize the methods I used to collect and analyze my data. In Chapter 3, I review the development of public housing in the United States and its present condition. In Chapter 4, I analyze the statutes, regulations and major judicial decisions that have dealt with no-trespass policies in public housing, to assess their constitutionality in terms of residents’ rights to have visitors and invitees’ rights to visit. In Chapters 5, 6, and 7, I present and analyze three case studies. In Chapter 8, I compare and contrast my findings from each case. In Chapter 9, I present my conclusions, recommendations, and strengths and limitations of the research.

Chapter 2. APPROACH AND METHODS

Within the broad topic of no-trespass policies, this dissertation focuses on research questions that are directly relevant to PHA decisions about whether to adopt, change, or drop such policies as part of an overall security strategy. I use an analytic framework that can help PHAs and HUD situate no-trespass policies within broader objectives that promote safety, residents' health and welfare, and quality of life for public housing families. My research questions are:

1. Are no-trespass policies legal? If so, what are the benchmarks by which to judge their legality?
2. Are no-trespass policies implemented as written? If not, how does their implementation differ from their language?
3. How are no-trespass policies experienced by residents, visitors, housing authority managers, and police?
4. Do no-trespass policies decrease crime, based on crime statistics?

These questions lend themselves to a comparative case study approach and qualitative methods to assess the impact of these policies on the people who live and work with them. I use this approach to gain a nuanced understanding of how no-trespass policies arise, how they relate to overall safety and security, how they have been implemented, and how they are perceived. My specific aims are:

1. To analyze how federal and state courts have adjudicated the "fairness" of no-trespass policies in case law.
2. To describe how no-trespass policies are implemented by the housing authority and police.

3. To evaluate the effects of no-trespass policies in public housing on perceptions of safety, crime control, tenants' quality of life, visitors' access, and fairness from the point of view of tenants, PHA management, police, and visitors.
4. To evaluate the effects of no-trespass policies on crime rates in public housing developments over time, compared to city-wide trends.

I selected three public housing authorities that differ in size and urban context, in the nature of their policies, and their enforcement strategies. I use a combination of document analysis, site visits, focus groups, and semi-structured interviews with a variety of stakeholders. I review longitudinal crime statistics, to the extent they are available, and compare them with city-wide trends. I conduct an analysis of current case law to explore how the courts have defined and delineated the balance between permissible and impermissible policies in terms of residents' and visitors' rights.

Preliminary Research. To inform development of this dissertation, I attempted to obtain the no-trespass policies of the 60 members of the Council of Large Public Housing Authorities (CLPHA), through a combination of online searches and email requests. Together, the members of the CLPHA manage 40% of the nation's public housing stock. I received responses from 26 PHAs, including a few smaller PHAs that had posted their policies online. Although the sample is relatively small, this preliminary work revealed that such policies are common and vary in the degree to which they restrict access to the property. All told, just three of the 26 stated that they did not have a no-trespass policy, and one (San Francisco) used the common law of nuisance (not trespass) to ban unwanted people. The results of my preliminary research are summarized in Table 1.

In analyzing the text of each policy, I developed a typology based on the criteria used to define who can be excluded from the property (and by extension, who has a legitimate right to

be there). The policies, as written, fell into three basic types, roughly analogous to trespass and zoning policies. The first type (which I call the *targeted model*) applies the drug-free zone concept, in which specific criminal conduct on the property is targeted. For example, the New York City Housing Authority's policy is directed toward those who are arrested (not convicted—more on this later) for felony drug offenses on or adjacent to housing authority property. Yonkers, NY, has this type of policy and is one of my case studies. The second type (which I call the *disturbance model*) is analogous to the parks exclusion laws, in which minor or major violations of housing authority rules can lead to trespass charges and subsequent banning. For example, the policy of the Boston Housing Authority (BHA) is directed toward those who commit “acts that would constitute a lease violation if the individual were a resident,” those who disturb “the quiet enjoyment of BHA residents,” (as judged by the BHA Manager) and those who engage in criminal activity. Chester, PA, has this type of policy and is the second of my case studies. The third type (which I call the *gated model*) is analogous to private property admonition programs, in which all people without legitimate purpose are considered trespassers. As mentioned earlier, some PHAs of this type have privatized streets within their developments to enhance their ability to limit access to authorized people only. For example, Charlotte (which has not privatized streets) states that its purpose is “to limit access and use of CHA property to the persons who have no legal or legitimate reason to be on the premises.” The last of my case studies, Annapolis, MD, had a gated type of policy until the PHA settled a lawsuit with its residents, and now has a targeted type.

Table 1. Preliminary Research on Trespass and Ban Policies, 2011. Compiled from online searches, email requests, and data from HUD on Public Housing Inventory and Resident Characteristics Report.

PHA	Size (# units/ develop- ments)	Race and ethnicity (% White/ AA/ Latino)	Type of Policy	Year enacted/ revised	Court challenge?	Threat of eviction to tenant?
New York City	196,643/196	40/55/44	Targeted	2007	Y (for vertical sweeps)	N
Boston MA	10,222/90	47/43/35	Disturbance	1997	N	Y
Cuyahoga OH	9,690/40	6/91/6	Targeted	2003	N	N
Newark NJ	8,404/47	22/77/27	None	---	---	---
Washington DC	8,096/97		Gated	2004	N	Y
LA City	6,898/24	72/24/72	Disturbance	?	N	Y
San Francisco	6,199/39	28/42/14	"public nuisance"	2007	Y	---
El Paso TX	5,919/32	99/1/98	Gated	?	Y	N
Hawaii	5,323/20	15/1/8	None	---	---	---
Cincinnati OH	5,234/38	8/91/1	Disturbance	?	N	N
Pittsburgh PA	4,801/51	76/22/14	Disturbance	2007	N	Y
Richmond VA	3,997/13	2/98/0	Gated	1997/ 2004	Y	N
Knoxville TN	3,804/21	48/52/1	Gated	1992	Y	
Charlotte NC	3,500/47	18/79/3	Gated	2003	N	Y
St. Louis MO	2,978/43	2/98/1	Gated	?	N	Y
Tampa FL	2,972/28	29/71/25	Gated	1994	Y	N
Omaha NE	2,708/35	29/68/5	Gated	2001	N	Y
Jacksonville FL	2,664/20	13/85/4	Gated	2003	N	N
Providence RI	2,605/13	69/25/66	Disturbance	?	N	N
Augusta GA	2,245/15	6/93/0	Disturbance	1999	N	N
Yonkers NY	2,035/9	62/37/51	Targeted	2009	N	N
Rockford IL	1,896/16	35/63/3	Disturbance	2010	N	Y
Oakland CA	1,588/28	62/27/47	None	---	---	---
Fayette County PA	1,320/8	71/28/0	Disturbance	2000	N	Y
Annapolis MD	1,013/10	7/91/2	Gated/Targeted (after settlement)	2001/ 2010	Y	N
Chester PA	771/11	4/95/1	Disturbance	2009	N	Y

Privatization of streets is an important aspect of these policies for urban planners, who continue to wrestle with the meaning and desirability of privatization of public spaces such as plazas, parks, and atria.⁷⁸ But only a handful of PHAs have used this arrangement, which entails a far greater level of legal complexity and cooperation between the PHA and its city than other policies. As mentioned earlier, Richmond and Knoxville deeded formerly public streets to their housing authorities. Although privatization may facilitate enforcement of trespass policy, in its absence, the housing authority still retains the right to exclude unauthorized people from the common areas of its property (such as laundry room, playground, lawn, walkway, driveway, and parking lot).

The basis of strongest legal challenge to no-trespass policies has been the residents' rights to have visitors. In general, the courts have found that invited guests are not considered trespassers if they stay within the scope of the invitation (meaning that they proceed directly to and from the apartment).⁷⁹ Most policies now specify that they do not apply to residents or invited guests. However, the original Annapolis policy (see Appendix C), challenged in court and amended by settlement in 2010, stated that the resident "shall not allow the person who has been excluded to be a guest of the resident in the housing authority development," and non-compliers "will receive a lease violation" and have their "historical record reviewed to determine the subsequent course of action." Policies continue to vary in the extent to which residents face possible eviction if they allow banned trespassers to visit them. This could have a

⁷⁸ Németh, J., Schmidt, S., "The privatization of public space: Modeling and measuring publicness." *Environment and Planning B: Planning and Design*. 2011; 38:5-23.

⁷⁹ See *Commonwealth v. Nelson*, 74 Mass. App. Ct. 629 (2009), *City of Bremerton v. Widell*, 51 P.3d 733 (Wash. 2002)

chilling effect on visitation, even if the trespasser could not be prosecuted. For example, Chester's policy (Appendix B) states that if a resident "invites, facilitates or permits a Banned Person to enter CHA Property, the resident will be in violation of the dwelling lease and subject to immediate lease termination procedures."

Selection of cases and revised analytic framework. In case study research, there is no need to select communities that typify or represent the underlying population of interest. Instead, each case study serves as a rich source of data that can generalize to theory, rather than to populations.⁸⁰ I chose three sites that differ in three criteria, as ascertained in my preliminary research: type of policy, legal challenge, and explicit warnings of eviction to residents. I could not include New York City, because at the time of case selection, the policy was still the subject of a class action suit, and its housing authority could not cooperate in the study.

The cases I chose are Yonkers, New York; Chester, Pennsylvania; and Annapolis, Maryland. I had hoped to include Richmond, Virginia in this study, but the PHA underwent a change of leadership that made cooperation impossible (the police chief was fired and is now suing; the executive director resigned earlier this year). I replaced Richmond with Annapolis, which had a gated type of policy until the PHA settled a lawsuit with its residents, and now has a targeted type. Chester's policy is the disturbance type, in that it is directed toward those whose conduct threatens the health, safety, and welfare of residents, whether or not that activity is illegal. Yonkers' policy is the targeted type, in that it is directed toward violent criminal activity on public housing property. The cases also offer diversity in other important aspects: legal challenge (Annapolis was challenged, the other two were not) and explicit warnings to residents

⁸⁰ Yin, R.K., *Case Study Research: Design and Methods*. Thousand Oaks, Ca.: Sage Publications, 2009.

about possible eviction if a banned person is invited (Chester has explicit warnings, Yonkers does not; Annapolis, as I mentioned, did explicitly warn residents of eviction in its old policy; the new one does not). Annapolis' policy is longstanding, and has evolved over time; Chester and Yonkers have more recent policies that have not changed. Yonkers is the site of a landmark case about desegregation in public housing;⁸¹ furthermore, Yonkers police publicly credited aggressive enforcement of no-trespass policies with a 42% decrease in Part I crimes (serious crimes such as homicide, rape, robbery, and assault) in public housing from 2011-2012.⁸² The same year, Part I crimes were down 13% citywide.⁸³

Although my typology of policies emerged from a close examination of the written text, and guided the selection of cases, it did not prove to be a useful framework for this analysis. In the course of my fieldwork, I found that the policies, as written, did not reflect the nature or extent of the policies, as enforced. For example, Chester has no active enforcement of its policy at all; instead, it has chosen to emphasize alternative security measures and other ways to promote the safety and welfare of its residents. The impact of each policy, I discovered, depended not on the type of policy, but instead on how each site balanced pro-family supports for tenants, pro-family supports for visitors, and security concerns in its application of the policy. This three-part framework proved more useful than my initial typology in understanding the role of no-trespass policies in fostering a safe place in which to live and raise a family, “a decent home and suitable living environment,” the principal goal of the 1949 Housing Act. Framed in

⁸¹ United States v. Yonkers Bd. of Educ., 624 F. Supp. 1276, 1288-1376 (1985)

⁸² Yonkers Police Housing Unit. Retrieved from <http://www.yonkersny.gov/Index.aspx?page=2141>

⁸³ YPD Crime Statistics for 2012. January 24, 2013. Retrieved from <http://www.yonkersny.gov/live/public-safety/police-department/crime-statistics-2015/2012-crime-statistic-press-conference>

this way, my approach, across cases and themes, seeks to determine how well each trespass policy serves the following objectives:

- Supporting the legitimate needs and concerns of tenants in promoting and sustaining family relationships;
- Supporting the legitimate needs and concerns of visitors in promoting and sustaining family relationships with tenants;
- Addressing the legitimate security concerns of tenants and management.

Data Collection. I conducted semi-structured interviews with each PHA Executive Director, other PHA managers, and police, and a focus group of residents. At each site, the Executive Director identified stakeholders that had a role in implementing the policy, and managers facilitated recruitments of residents. I supplemented these data with analysis of PHA documents and police (e.g. ban lists, grievance procedures, resident newsletters, and crime statistics) and direct observation from tours of each site.

Before each interview, I described the study and obtained written informed consent to participate and to tape the interview (in one site, a number of PHA officials did not want to be taped and thus I used handwritten notes). My interview guide focused on these factors of interest: the perceived safety of residents, the PHA's overall safety and crime prevention measures, the effectiveness of the no-trespass policy, perceived effects of the trespass policy on visitors (both wanted and unwanted) and cooperation with the appropriate police and security. As called for by standard semi-structured interviewing techniques, I followed up on interesting conversational leads that these questions generated.

For the focus groups of residents, I developed a series of open-ended questions that explored perceived safety and quality of life issues in their developments, their awareness of the no-trespass policy, and the policy's day-to-day effects. Focus groups are organized, interactive group discussions designed to explore participants' beliefs, attitudes, experiences, and reactions to a given topic, as well as the group's shared understanding of everyday life.^{84,85} Focus groups are particularly useful for obtaining several perspectives about the same topic, exploring the degree of consensus on a given topic conducting research that is exploratory and hypothesis generating; and when there are power differences between the participants and decisionmakers.⁸⁶ In one site, I was unable to arrange a group and so I conducted individual interviews with each resident at his or her home.

Data Analysis. All interviews and focus groups were transcribed, and hand notes and observations written up immediately after the visit. To analyze the data, I followed a standard series of steps, as laid out by Yin in *Case Study Research*.⁸⁷ My process was to code categories based on the content of data collected from the participants rather than from pre-existing theories about the effects of no-trespass policies and to use concepts and vocabulary borrowed directly from the participants. A close reading of the text allowed me to code inductively for emergent themes.

First, I coded in categories that relate to my specific aims (perceptions of safety, quality of life, visitor access, crime control, fairness). Multiple readings of the transcripts/notes allowed

⁸⁴ Krueger, R.A., Casey, M.A., *Focus Groups: a Practical Guide for Applied Research*. Thousand Oaks, Ca.: Sage Publishing, 2000.

⁸⁵ Gibbs, A. *Focus Groups*. Department of Sociology, University of Surrey. 2003. Retrieved from http://isites.harvard.edu/fs/docs/icb.topic549691.files/Focus_Groups.pdf

⁸⁶ Ibid.

⁸⁷ Yin, R.K., *Case Study Research: Design and Methods*. Thousand Oaks, Ca.: Sage Publications, 2009.

me to refine those categories and create new ones from the text itself and the phrases used. I marked relevant segments of text in each category. Within each category, I looked for subcategories, contrasting viewpoints, and insights. My goal was to capture the key aspects of the data through categorization that could be lumped into relevant and distinct themes, rather than split into many small categories that would not portray a cohesive story (nor allow an answer to my research questions).

Review of crime statistics. In each site, I compared available housing authority data with city-wide data on Part I crimes. I had hoped to obtain address-level data on crime and analyze the effects of the no-trespass policy on crime within a set perimeter around the sites (to assess the possibility of displacing crime rather than preventing it), but those data were not available for release. Instead, I compared existing longitudinal data to determine whether the housing authority crime rates deviated from the time trends for each city as a whole. I present these data descriptively.

Legal analysis. To answer my research question about how courts have viewed the issue of the fairness of no-trespass policies, I analyzed common law, statutes, regulations, and case law on the subject. Using LexisNexis and Internet searches, I identified articles and cases in which a no-trespass policy in public housing was the issue that gave rise to the action. I used secondary sources to identify cases, but primary sources such as judicial opinions and administrative law, in the analysis. For each case, I reviewed the facts, the relevant legal principles applied, and the judicial reasoning behind the decision. I point out consistencies and inconsistencies across decisions, and assess the constitutionality of the policies in terms of tenants' and invitees' rights. I also indicate the issues that remain unresolved.

Chapter 3. PUBLIC HOUSING, THEN AND NOW

Despite more than 70 years of public investment in affordable housing, “a decent home and suitable living environment”⁸⁸ remains an unattainable goal for a surprisingly large segment of the population. This chapter describes the origins of public housing, its shrinking role in federally-supported housing programs, and the crucial role it continues to play in providing affordable housing to the neediest households.

According to the latest report to Congress from the U.S. Department of Housing and Urban Development (HUD), the unmet need for decent, safe, and affordable rental housing continues to outpace the ability of federal, state, and local governments to supply housing assistance.⁸⁹ The report finds that 7.7 million renter households (6.7% of all households) had “worst case housing needs” (WCN) in 2013, an increase of 49% since 2003. The WCN population consists of unassisted very low-income (0%-50% of area median income) renters who either (1) pay more than one-half of their monthly income for rent or (2) live in severely inadequate conditions, or both. The WCN population has grown for three reasons: shrinking incomes of renters, a growing reduction in rental assistance, and increased competition for affordable units.⁹⁰ Because of competition and inadequate physical conditions, only 34 units of adequate, affordable rental housing exist for every 100 extremely low-income renters (defined as those having 30% or less of area median income).

⁸⁸ The American Housing Act of 1949 (Title V of P.L. 81-171)

⁸⁹ Steffen, B.L., Carter, G.C., Martin, M., Pelletiere, D., Vandenbroucke, D.A., Yao, Y.G., Gann, D., “*Worst Case Needs: 2015 Report to Congress.*” U.S. Department of Housing and Urban Development, April 2015.

⁹⁰ Ibid.

Federal programs administered through HUD are a bulwark against further deterioration in affordable housing. HUD now assists about 4.3 million very low-income households through three key programs, the first of which is the focus of this dissertation:

1. Public housing (24 CFR Pt. 5), which provides affordable housing to 1.1 million families through units owned and managed by local public housing agencies (PHAs). Families are required to pay 30% of their adjusted gross monthly incomes for rent.

2. Project-based vouchers (24 CFR 983), which provides assistance to 1.3 million families living in privately-owned rental housing. The vouchers are distributed by PHAs and are attached to the units, which are reserved for low-income families who are required to pay 30% of their incomes for rent.

3. Tenant-based rental assistance (Housing Choice Vouchers, 24 CFR 982), which supports the rent payments of more than two million families in the private rental market. The vouchers are distributed through PHAs and are portable. Recipients pay a minimum of 30% of their income in rent, but they can supplement the vouchers with payments of their own to find suitable housing.

Without these HUD programs, many of these households would be among the WCN population.⁹¹ Because HUD programs give priority to the very low income, they are highly effective in reaching the WCN population. One study estimated that adding 100 HUD-assisted

⁹¹ McClure, K., *“Reduction of worst case housing needs by assisted housing.”* Report Prepared for HUD, February 28, 2011. Available at SSRN. <http://dx.doi.org/10.2139/ssrn.1914423>

units, would, on average, decrease the WCN population by 80-90 households.⁹² Thus, federally-supported housing, including public housing, is a critical piece of affordable housing policy.

As Lawrence Vale notes, the saga of public housing reveals the strains of racial relations, the struggles over class, and distinctive choices about land use and zoning in the American city.⁹³ The roots of public housing lie in the Housing Act of 1937, which brought government into the production and ownership of housing.⁹⁴ Ostensibly the legislation addressed the need for low-income housing (among the temporarily “submerged middle class”⁹⁵ of the Depression) and the government’s responsibility to produce it. However, a number of commentators have suggested that the 1937 Act’s primary purposes were slum clearance, economic stimulus, and job creation.⁹⁶ In fact, the Act included an “equivalent elimination” provision, requiring that one substandard unit be removed for every unit of public housing built. At the time, this meant that public housing would not contribute to significant gains in the low-rent housing stock and would not compete with private development.⁹⁷ The 1937 Act established the U.S. Housing Authority as the federal agency in charge of funding public housing, but required that locational and operational decisions be made by a state-chartered and locally-governed Public Housing Authority (PHA). This gave states and localities the right to choose whether or not to participate

⁹² McClure, K., “Reduction of worst case housing needs by assisted housing.” Report Prepared for HUD, February 28, 2011. Available at SSRN. <http://dx.doi.org/10.2139/ssrn.1914423>

⁹³ Vale, L.J., “Overview: The meanings of public housing.” In: Carmon, N. and Fainstein, S., Eds. *Policy, Planning and People*. Philadelphia, Pa.: University of Pennsylvania Press, 2013.

⁹⁴ Bennett, L., Smith, J.L., Wright, P.A., Eds. *Where Are Poor People to Live? Transforming Public Housing Communities*. Armonk, N.Y.: M.E. Sharpe, Inc., 2006.

⁹⁵ Friedman, L.M. “Public housing and the poor: An overview.” *California Law Rev.* 1966; 54:642-69.

⁹⁶ Hunt, D.B., “Was the 1937 U.S. Housing Act a pyrrhic victory?” *J of Planning History*. 2005; 4:195-221.

⁹⁷ Vale, L.J., “Overview: The meanings of public housing.” In: Carmon, N. and Fainstein, S., Eds. *Policy, Planning and People*. Philadelphia, Pa.: University of Pennsylvania Press, 2013.

in the program by deciding whether or not to create PHAs.⁹⁸ The federal government provided capital financing to these quasi-public agencies through long-term Annual Contributions Contracts (ACCs). Local control virtually guaranteed that public housing would only be situated in central cities and that it would be highly segregated.⁹⁹ This legacy of segregation lingers over public housing today, and is evident in each case study in this dissertation.

Although the 1937 Act fell far short of meeting the demand for low-income housing, it did guide future efforts that would reflect its deep subsidies, large-scale planning, local implementation with federal funding and supervision, and an assumption of housing-market failure.¹⁰⁰ However, the origins of the subsequent distress in public housing can be found in the original funding formula, in which tenants' rents were expected to cover the operating expenses of the properties. When the buildings were relatively new, the formula worked, but as buildings began to age and as a new group of lower-income tenants moved in, the funding formula proved inadequate to cover maintenance and repair costs.¹⁰¹

The Housing Act of 1949, which called for the creation of 810,000 new public housing units by 1954, tied public housing to large-scale slum clearance. It authorized the Urban Renewal program—formalizing the policy of slum clearance in the 1937 Act—and required communities to give preference for public housing units to families displaced by Urban Renewal.¹⁰² Many housing experts cite the 1949 Act as the culprit for a shift to high-rise public housing, because of

⁹⁸ McCarty, M., *Introduction to Public Housing*. Congressional Research Service (Report No.R41654), 2014.

⁹⁹ Schwartz, A.F., *Housing Policy in the United States*. New York, N.Y.: Routledge, 2010.

¹⁰⁰ Hunt, D.B., "Was the 1937 U.S. Housing Act a pyrrhic victory?" *J of Planning History*. 2005; 4:195-221.

¹⁰¹ Bratt, R.G., "The road to PETRA." Summer, 2010. Retrieved from http://www.shelterforce.org/article/2015/the_road_to_petra/

¹⁰² McCarty, M., *Introduction to Public Housing*. Congressional Research Service (Report No.R41654), 2014.

the Act's ambitious production goals and the desire to minimize the amount of land devoted to housing the poor.¹⁰³ The explicit tie to Urban Renewal meant that the program began to house more families of color, particularly black families, who had been uprooted and displaced. In an era of legal segregation and discrimination, the increasing proportion of black families living in public housing led to great opposition to new public housing development in some predominantly white communities and to the perpetuation of segregation in public housing properties themselves.¹⁰⁴

By the late 50s and 60s, public housing had gradually become housing of last resort,¹⁰⁵ for the "certainly, indisputably, and irreversibly poor."¹⁰⁶ The median income of public housing residents fell from 57% of the national median in 1950 to 41% in 1960, 29% in 1970, and less than 20% by the mid-90s.¹⁰⁷ The well-intentioned Brooke Amendment in 1969 (capping public housing rents at 25% of income), combined with an increasing priority on selecting the extremely poor, threatened the fiscal viability of public housing.¹⁰⁸ Rent collections did not cover operating costs, leading to a serious and inevitable deterioration of some units, particularly in high-rises. Deeming public housing a failure, President Nixon declared a moratorium on new public housing construction commitments in 1973. After the moratorium, the focus of federal housing assistance policy shifted away from constructing new public housing units to providing

¹⁰³ Bennett, L., Smith, J.L., Wright, P.A., Eds. *Where Are Poor People to Live? Transforming Public Housing Communities*. Armonk, N.Y.: M.E. Sharpe, Inc., 2006.

¹⁰⁴ McCarty, M., *Introduction to Public Housing*. Congressional Research Service (Report No.R41654), 2014.

¹⁰⁵ Vale, L.J., "Overview: The meanings of public housing." In: Carmon, N. and Fainstein, S., Eds. *Policy, planning and people*. Philadelphia, Pa.: University of Pennsylvania Press, 2013.

¹⁰⁶ Friedman, L.M., "Public housing and the poor: An overview." *California Law Rev.* 1966; 54:642-69.

¹⁰⁷ Schwartz, A.F., *Housing Policy in the United States*. New York, N.Y.: Routledge, 2010.

¹⁰⁸ Vale, L.J., *Reclaiming Public Housing: A Half Century of Struggle in Three Public Neighborhoods*. Cambridge, Ma.: Harvard Press, 2002.

subsidies for existing and new units in the private housing market through the Section 8 program, created by the Housing Act of 1974.¹⁰⁹ Congress officially ended all funding for large-scale construction in 1981, and HUD focused its efforts on 1) replacing distressed public housing with lower density, mixed-income units (HOPE VI), and 2) deconcentrating poverty and desegregating through vouchers and mobility initiatives [such as the remedial Gautreaux program (part of a legal settlement¹¹⁰) and the experimental Moving to Work¹¹¹].

Public housing is a critical, albeit shrinking, part of America's social safety net. Even after the most distressed units have come down, nearly 1.1 million public housing units remain. About 2.2 million people live in publicly-owned and operated housing, including 850,000 children. Federal subsidies are given to about 3,300 PHAs across the country, which operate as quasi-governmental entities responsible for the selection of residents, and management and upkeep of the properties. Each PHA is run by a Board of Commissioners, which owns the property and must follow all property laws. Commissioners are appointed by the locality's executive officer (e.g., mayor) and confirmed by its governing body (e.g., City Council). The Quality Housing and Work Responsibility Act (QHWRA) of 1998 mandated that at least one of these commissioners be a public housing tenant or voucher holder.¹¹² About 80% of PHAs are considered "small," defined as those with 550 or fewer public housing units and vouchers combined. About 40% of all public housing units are operated by the 60 largest PHAs, including 13% operated by the New York City Housing Authority alone.

¹⁰⁹ McCarty, M. (2014). *Introduction to public housing*. Washington, DC: Congressional Research Service (Report No.R41654).

¹¹⁰ *Hills v. Gautreaux* 425 U.S. 284, 1976

¹¹¹ Duncan, G.J. and Zuberi, A., "Mobility lessons from Gautreaux and Moving to Opportunity." *Northwestern J of Law and Social Policy*. 2006; 1:110-26.

¹¹² 24 CFR PART 964

The latest HUD data¹¹³ reveal the following demographic information on public housing households: three-quarters are headed by a woman, and 36% are headed by a woman with children. Nearly one-third are seniors, and about 20% are disabled. Only 28% of all households derive their income primarily from wages. The average household income in 2013 was \$13,724; 72% of residents have incomes less than 30% of the national median, and 91% have incomes less than half of the national median. Public housing developments are located in overwhelmingly poor neighborhoods, with more than 30% of residents of the census tracts in which public housing is located living in poverty. Residents of public housing are disproportionately minorities: 48% are black and 23% are Latino. Despite decades of successful litigation that called for desegregating public housing, it remains overwhelmingly segregated and located in highly segregated neighborhoods; 62% of the residents of census tracts in which public housing is located are racial and ethnic minorities.

By most accounts, the present inventory of public housing is in decent condition.¹¹⁴ Michael Stegman, a former HUD official noted, “Public housing is unpopular with everybody except those who live in it and those who are waiting to get in.”¹¹⁵ However, it faces an estimated \$26 billion backlog of repair needs, and is losing roughly 10,000 public housing units each year to disrepair. In 2012, Congress passed the Rental Assistance Demonstration (RAD)¹¹⁶, which allows PHAs to convert public housing stock into project-based voucher contracts. The program allows PHAs to attract and leverage private debt and equity to address capital needs, while ostensibly

¹¹³ U.S. Department of Housing and Urban Development. *A Picture of Subsidized Households, 2013*. Retrieved from www.huduser.org

¹¹⁴ Schwartz, A.F., *Housing Policy in the United States*. New York, N.Y.: Routledge, 2010.

¹¹⁵ Ibid.

¹¹⁶ Rental Assistance Demonstration. N.d., Retrieved from <https://www.hudexchange.info/programs/rad/>

preserving affordable housing. In 2015, Yonkers successfully applied to this program, and will begin to convert some of its properties next year. HUD secretary Julian Castro recently hailed the program for its ability to bring private investment into the fold for public good, noting that it had attracted \$733 million in capital to public housing authorities to date.¹¹⁷ The focus has now shifted from demolition of public housing to raising the capital to maintain these properties and improve the quality of life for people who live there.

¹¹⁷ Castro, J. "Our national affordable housing crisis." April 7, 2015. Retrieved from <http://www.cnn.com/2015/04/07/opinions/castro-affordable-housing-crisis/>

Chapter 4. LEGAL ANALYSIS

Trespass and ban policies in public housing potentially conflict with the legal rights of both tenants and invitees. They can interfere with a tenant's common law and statutory right to have visitors, and constitutional guarantees of freedom of association and due process. They can conflict with a non-resident's constitutional rights of freedom of speech, freedom of association, due process, and freedom from unreasonable search and seizure. Some of these conflicts turn on whether the housing authority is acting as landlord or as government entity; others turn on definitions of "family," "reasonable," or "invitation." The two primary legal questions are:

- A. Can an invited guest be prevented from coming on to the premises? and
- B. Can a tenant be evicted for allowing an invitee to come on to the premises?

In this chapter, I review the legal context for these policies, as well as the considerable litigation around them. I analyze when, and under what circumstances, trespass and ban policies are likely to be legal, and conversely, when they are likely to fail upon legal challenge

The lease agreement, setting forth the rights and responsibilities of tenants and landlords, provides the first stepping stone for assessing the permissibility of trespass and ban policies. If the provisions of a policy contravene the basic contract that governs the lease of real property, we need not go further; the policy cannot withstand legal challenge. In the next section, I discuss when, if ever, a lease allows a landlord to restrict a tenant's invited guests or evict a tenant because of the invitation.

- 1. Under the provisions of the lease, can the landlord deny access to an invitee because the landlord believes that he has committed a felony, or because he has been arrested and charged with a felony, or because he has been convicted of a felony?**

Longstanding traditions give tenants the right to peaceful enjoyment of the premises and the right to have invited guests. This central tenet of landlord-tenant relations has been codified in many state statutes and enumerated in many leases. It is no less applicable in public housing than it is in private housing.¹¹⁸

*There is an implied covenant of quiet enjoyment in every lease of real property. The covenant is between lessor and lessee. Any wrongful act of the lessor that interferes with the lessee's possession, in whole or in part, is a breach of the covenant of quiet enjoyment.*¹¹⁹

Commentators and courts have noted that one of the strongest defenses against trespass and ban policies is the common law right of invitation.¹²⁰ In *State of Maine v. Coster*, the Maine Judicial Supreme Court noted that the right “to have visitors in their homes for at reasonable times and for reasonable purposes is so fundamental that it requires no statutory authority.”¹²¹ In *Coster*, the court held that a (private) landlord’s desire to ban a tenant’s boyfriend from the premises constituted a breach of the covenant of quiet enjoyment. When the landlord and tenant disagree, the courts have found that tenants have the “final word” on who may visit, and that the tenant is responsible for the behavior of that visitor.¹²²

In an early public housing trespass case, *L.D.L. v. State*, a Florida Appeals Court found that a teenager could not be a trespasser if he had been invited by the tenant, even though the Tallahassee Housing Authority had “expressly forbidden” him months earlier.¹²³ In a more

¹¹⁸ In re Jason Allen D., 733 A.2d 351 (Md. Ct. Spec. App. 1999)

¹¹⁹ Branish v. NHP Property Management, Inc., 694 A.2d 1106 (Pa. Super. Ct. 1997), quoting Lichtenfels v. Bridgeview Coal Co., 366 Pa. Super. 304 A.2d 22 (1987)

¹²⁰ Goldstein, E., “Kept out: Responding to public housing no trespass policies.” *Harv. Civ. R. Civ. Lib. L. Rev.* 2003; 38:215-45.

¹²¹ State v. DeCoster, 653 A.2d 891 (Maine 1995)

¹²² State v. Schaffel, 229 A.2d 552 (Conn. Cir. Ct. 1966)

¹²³ L.D.L. v. State, 569 So.2d 1310 (Fla. Ct. App. 1 Dist. 1990)

recent case, *Commonwealth v. Nelson*, the Massachusetts Court of Appeals confirmed that a criminal trespass conviction could not stand against an invited guest who had been passing through the halls of housing authority property to reach a tenant's apartment.¹²⁴

Of course, an invitation is not an absolute right. The Washington Supreme Court in *City of Bremerton v. Widell*,¹²⁵ citing *Williams v. Nagel*,¹²⁶ allowed for the possibility that "legitimate" landlord concerns could restrict invitational rights:

Recognizing the legitimate landlord concerns, courts have noted that tenants of public housing, like all tenants living in communal environments, may have their right to invite guests restricted by the terms of their lease. See Restatement (Second) of Torts § 189 cmt. c (1965).

The Second Restatement of Torts, cited above, acknowledges the "right of the landlord to make reasonable regulations concerning entry upon or use of the portions of the premises retained within his control, for the protection of the premises themselves or of other tenants."

The right of invitation does not grant a visitor access to the entire project or development. Common law and case law are clear that staying within the scope of the invitation is key; the visitor has access to the grounds and hallways only on the way to and from the unit.¹²⁷ How far a visitor can stray is still an open question. In *City of Bremerton*,¹²⁸ the Washington Supreme Court found:

An invited visitor may proceed only through those common areas necessary for ingress and egress from the tenant's unit. In essence, "[a] tenant's guest may not proceed at will to a part of the premises wholly disconnected to the purpose of

¹²⁴ *Commonwealth v. Nelson*, 909 N.E.2d 42 (Mass. App. Ct. 2009)

¹²⁵ *City of Bremerton v. Widell*, 51 P.3d. 733 (Wash. 2002)

¹²⁶ *Williams v. Nagel*, 643 N.E.2d 816 (1994)

¹²⁷ See, for example, *Commonwealth v. Richardson*, 48 N.E.2d 678 (Mass. 1943)

¹²⁸ *City of Bremerton v. Widell*, (2002)

the invitation and use the invitation as a defense to a charge of criminal trespass.” Arbee v. Collins, 219 Ga. App. 63, 463 S.E.2d 922, 925-26 (1995).

Further, the precise boundaries of what is considered an “invitation” is still open. Is a standing invitation from a relative enough to overcome a charge of trespassing, or must there be a specific date and time? Must the tenant be present to confirm the invitation? The Court in *City of Bremerton*, while overturning convictions against some defendants who had been invited by tenants, upheld other convictions because the invitees were seen, unaccompanied, several blocks away from the tenant’s unit.¹²⁹

The common law rights of quiet enjoyment and visitation may provide a strong defense against trespass and ban policies. I would argue, however, that certain restrictions on visitation are permissible under lease provisions, on the basis of a landlord’s right to protect property or the responsibility to protect other tenants. Whether the restrictions of a particular trespass and ban policy can reach this threshold will depend on the nature of the threat posed to property or other tenants. I suspect that many broadly-drawn policies would not reach this threshold. In addition, because common law rights are *tenants’* rights, they may be of limited use as grounds for a banned visitor’s challenge. As one commentator notes, “Common law provides at best only imperfect protection—especially for visitors who may not be able to enforce a tenant’s common-law rights.”¹³⁰

2. Under the provisions of the lease, can the landlord evict a tenant because the landlord believes that a visitor or member of the family has committed a felony, or because he has been arrested and charged with a felony, or because he has been convicted of a felony?

¹²⁹ *City of Bremerton v. Widell*, (2002)

¹³⁰ Beck, G.A., “Ban lists: Can public housing authorities have unwanted visitors arrested?” *U Ill Law Rev.* 2004; 5:1223-60.

In public housing, this question of eviction has been answered definitely, and positively, by the plain language of the Anti-Drug Abuse Act of 1988, which was upheld by the Supreme Court in *HUD v. Rucker*.¹³¹ The Act provides that each “public housing agency shall utilize leases ... provid[ing] that ... any drug-related criminal activity on or off [federally assisted low-income housing] premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.”¹³² In *Rucker*, the U.S. Supreme Court upheld the eviction of a grandmother and three relatives from the Oakland Housing Authority unit she had lived in for 20 years after her daughter, without her knowledge, smoked crack cocaine off the premises. The Court found that Congress intended to impose a strict-liability standard on tenants, with no “innocent tenant” defense. HUD regulations specify that neither arrest nor conviction of the tenant or guest is needed to evict a tenant, given the civil nature of eviction:¹³³

The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

Having shown that it may be permissible under provisions of **the lease** for a landlord to deny access to invitees who threaten property or other tenants, and that is certainly permissible

¹³¹ Department of Housing and Urban Development v. Rucker, 535 U.S. 125 (2002)

¹³² Ibid.

¹³³ Kaplan, W.J., Rossman, D., “Called out at home: The one strike eviction policy and juvenile court.” Duke Forum for Law & Social Change. 2011; 3:109-38.

to evict tenants under trespass and ban policies, I now turn to whether such policies violate statutory provisions and HUD regulations that govern the activities of public housing authorities.

3. Do provisions allowing this type of exclusion and eviction violate statutory protections and HUD regulations and are they therefore invalid?

HUD regulations¹³⁴ require public housing leases to include “reasonable accommodation” of the tenant’s guests,¹³⁵ and the U.S. Housing Act¹³⁶ prohibits unreasonable lease terms. But what does “reasonable” mean? For example, in *Lancor v. Lebanon Housing Authority*,¹³⁷ the U.S. Court of Appeals found that requiring prior written approval of overnight guests was neither necessary nor reasonable, and did not provide for the reasonable accommodation of a tenant's guests or visitors. However, *Lancor* provided no specific standards for review.

This issue arose in *Diggs v. Housing Authority of the City of Frederick*,¹³⁸ where residents challenged the PHA’s trespass policy that stated that anyone with “no apparent legitimate reason” for being on the premises could be excluded. After being cited, non-residents could be arrested for trespass if they returned for any reason, including visiting a tenant. Names stayed on a trespass log indefinitely, and the executive director had unlimited discretion to remove names from the log. The residents claimed that the policy violated both the Housing Act's statutory mandate and HUD's implementing regulation requiring “reasonable accommodation” of guests. The court granted a preliminary injunction to the plaintiffs, finding that:

¹³⁴ 24 C.F.R. § 966.4

¹³⁵ Goldstein, E., “Kept out: Responding to public housing no-trespass policies.” *Harvard Civil Rights-Civil Liberties Journal Review*. 2003; 38, 215-45.

¹³⁶ 42 U.S.C. § 1437

¹³⁷ *Lancor v. Lebanon Housing Authority*, 760 F.2d 361 (1st Cir. 1985)

¹³⁸ *Diggs v. Housing Authority of the City of Frederick*, 67 F. Supp. 2d 522 (D. Md. 1999)

...the trespass policy as currently enforced is a virtually permanent bar to a tenant's right to invite a guest into her own home, no matter how close a friend or relative that potential guest might be. Under the policy, all persons who have been issued a trespass citation, whether correctly or incorrectly...are indefinitely prohibited from returning to Housing Authority property even if a tenant personally escorts them from the public sidewalk into the tenant's own apartment. Furthermore, tenants have been told that they face eviction if they invite persons known to be on the trespass log into their homes. A tenant's only recourse if she wishes to receive such a guest is a burdensome appeal to the Authority's Executive Director who exercises unfettered discretion in her rulings.

[Diggs was settled and the trespass policy amended by consent decree¹³⁹ in 2000.]

In *Richmond Tenants Organization v. Richmond Redevelopment and Housing Authority*,¹⁴⁰ a U.S. District Court provided a working definition of unreasonableness and the standard for review. In that case, public housing tenants challenged new lease provisions that prohibited possession of firearms or weapons of any type, and that called for eviction for illegal use, sale, or distribution of drugs or alcoholic beverages on or off the premises. The court upheld most of the new lease terms, although it struck “weapons of any type” as overly broad.

Because this is a case of first impression, this Court must decide what constitutes an “unreasonable” lease term. The Court interprets this clause to require that lease terms be rationally related to a legitimate housing purpose. In applying this test, the crucible of reasonableness will be defined by the particular problems and concerns confronting the local housing authority. Lease provisions which are arbitrary and capricious, or excessively overbroad or under-inclusive, will be invalidated.

Viewing the lease modifications collectively, it is clear that RRHA was attempting to remedy the extraordinary crime problem in the development. From the guest limitation to the prohibition of firearms, competent evidence indicates that the new lease terms were designed to reduce crime. Certainly, rational people may differ about the efficacy of gun control or the notice required before commencing an emergency eviction. However, this Court will not substitute its

¹³⁹ Consent Decree, *Diggs v. Housing Authority of Frederick*, Nov. 16, 2000, available at: <http://nhlp.org/node/1392>

¹⁴⁰ *Richmond Tenants Organization v. Richmond Redevelopment and Housing Authority*, 751 F. Supp. 1204 (E.D. Va. 1990)

own judgment for that of the housing authority. So long as the lease terms are reasonably related to a housing problem, they will be permitted.

This lesser standard of review means that the courts will defer to the housing authority, as long as there is a rational basis for its policy. Most trespass and ban policies will survive these statutory challenges if the provisions are rationally related to the “problem,” which in most jurisdictions is crime committed by non-residents. But this deference has its limits. In *Wellston Housing Authority v. Murphy*¹⁴¹, the Missouri Court of Appeals found that a guest’s criminal record that involved activity prior to the tenant’s lease term was not a reasonable cause for evicting that tenant.

The court pointed to an important distinction between the Housing Authority’s rights and responsibilities toward its tenant, and its posture toward the non-resident visitor:

Housing Authority also argues that because it had discretion either to reject the application for public housing of a person with a criminal record or to prohibit individuals with criminal records from entering onto public housing property, it could terminate tenant's lease for her permitting Lockett onto the property as her guest. Assuming, without deciding, that Housing Authority had the power to reject Lockett as a tenant and/or to bar him from the property, it does not also mean that Housing Authority could terminate tenant's lease because Lockett was on the property as her guest. Housing Authority's rights regarding Lockett are separate and distinct from its rights regarding the termination of tenant's lease on the basis of Lockett's presence on the Property.

This distinction is an important one, as it suggests that non-residents are not likely to prevail on statutory and regulatory grounds designed to protect tenants’ rights. Indeed, in *Thompson v. Ashe*,¹⁴² the U.S. Court of Appeals found that Thompson, a banned non-resident, lacked

¹⁴¹ *Wellston Housing Authority v. Murphy*, 131 S.W.3d 378 (Mo.App.2004)

¹⁴² *Thompson v. Ashe*, 250 F.3d 399 (6th Cir. 2001)

standing to raise questions of whether the trespass policy violated tenants' rights to have guests.

Having shown that such exclusion and eviction provisions are permissible under the lease, so long as they are rationally related to a legitimate housing purpose, and do not violate statutory and regulatory requirements, I turn now to whether they are unconstitutional, and consider the constitutional rights of tenants and visitors separately.

4. Do provisions allowing this type of exclusion and eviction violate a *tenant's* constitutional rights to have reasonable visitation from family members and others?

Trespass and ban policies have been challenged by tenants on a number of grounds, including procedural due process, substantive due process, freedom of association, freedom of speech, freedom from unreasonable search and seizure, and equal protection. In *Rucker*, the Supreme Court dismissed substantive due process claims, reasoning that the resident's constitutional rights were not at issue because the government was acting in its capacity as landlord and not sovereign. Further, it ruled that procedural due process was satisfied by the state court eviction proceeding, which held the PHA to a "preponderance of the evidence" standard. One commentator questioned whether the "One Strike" provision could have withstood consideration of the doctrine of unconstitutional conditions, by which the state cannot grant a privilege or a benefit on the condition that the recipient must waive a constitutional right (substantive due process).¹⁴³ Nevertheless, the Court did not choose to apply that doctrine in *Rucker*.

¹⁴³ Hannaford, R., "Trading due process rights for shelter: *Rucker* and unconstitutional conditions in public housing leases," *U. Pa. J. Const. L.* 2003; 6:139-162.

A resident's free speech rights were at issue in *De La O v. Housing Authority of the City of El Paso*,¹⁴⁴ which challenged a trespass and ban policy that restricted campaigning on PHA property. Although the policy was directed to non-residents, the resident claimed it violated his free speech rights, because, "the right to receive information is as equally protected as is the right to convey it." First the U.S. Court of Appeals applied a "forum analysis"¹⁴⁵ to determine the extent of permissible regulation of speech on government property. The court held that Housing Authority property is a non-public forum, requiring only that regulation be content-neutral and reasonable. Given that analysis, the court upheld the constitutionality of El Paso's policy.

Constitutional issues arose again in Annapolis, Maryland, the site of my case study summarized in Chapter 7. In 2009, the American Civil Liberties Union filed suit¹⁴⁶ in behalf of 13 residents and banned guests. The resident plaintiffs claimed that the banning policy, as written and as applied, violated their First and Fourteenth Amendment rights, as well as their statutory and common law rights. The complaint cited *Diggs* and *In re Jason Allen D.* as Maryland cases that establish the statutory rights of public housing tenants to have invited guests. The complaint addressed the issue of government-as-private-landlord by including the city of Annapolis and the Annapolis Police Department as defendants, thereby inserting constitutional issues to arise. It alleged:

Defendants, in the course of performing governmental functions [emphasis added] for the City of Annapolis, and pursuant to the Banning Policy, have engaged in a pattern and practice of unconstitutionally depriving plaintiffs of their fundamental rights to freedom of association and assembly, and have unconstitutionally suspended the First and Fourteenth Amendments to the Constitution of the United States from applicability in and around public housing in the City of Annapolis.

¹⁴⁴ *De La O v. Housing Authority of the City of El Paso*, 417 F.3d 495 (5th Cir. 2005)

¹⁴⁵ *United States v. Kokinda*, 497 U.S. 720 (1990)

¹⁴⁶ *Sharps v. The Housing Authority of the City of Annapolis*, Civil Case No. 02C09143799

The complaint builds a case that because the Banning Policy violates fundamental rights, the court should use strict scrutiny as the standard for review (something no court had done in past trespass and ban cases). It alleges that the defendants violate these rights “through policies and practices that are not narrowly tailored to serve a compelling state interest.”

As I discuss in Chapter 7, we do not know whether the plaintiffs would have prevailed, because *Sharps* was settled, and the trespass policy amended, by agreement in 2010.

5. Do provisions allowing this type of exclusion and eviction violate a visitor’s constitutional rights to have reasonable visitation from family members and others?

Trespass and ban policies have been challenged by visitors on a number of grounds, including procedural due process, substantive due process, freedom of association, freedom of speech, freedom from unreasonable search and seizure, right of privacy, and equal protection. *Thompson v. Ashe*,¹⁴⁷ a class-action suit on behalf of people who had been, were presently, or in the future would be on Knoxville’s “no-trespass” list, alleged that the policy violated their rights to privacy and freedom of association protected by the First and Fourteenth Amendments; violated their rights to be free from unreasonable searches and seizures protected by the Fourth Amendment; and violated their rights to equal protection and due process of law under the Fourteenth Amendment. The court found that Thompson had no fundamental right to visit family and friends in the development and had not demonstrated any violation of his constitutional rights, and affirmed the lower court’s summary judgement for the defendants:

The [lower] court held that Thompson's freedom of association claims were more properly analyzed under the Fourteenth Amendment due process clause and that the complaint did not state a claim under the First Amendment; that the record clearly demonstrated probable cause to arrest Thompson for criminal

¹⁴⁷ *Thompson v. Ashe*, 250 F.3d 399 (6th Cir. 2001)

trespass under the Tennessee Criminal Trespass statute and his arrest did not violate the Fourth Amendment... that assuming Thompson could demonstrate a right, as an invited guest, to visit family and friends residing in KCDC housing developments, that right is not fundamental, and the “no-trespass” policy is rationally related to the legitimate governmental interest in providing a safe housing to the tenants of KCDC. The court further held that because the plaintiffs had not shown that the policy discriminates against any protected groups, the policy did not violate the Fourteenth Amendment’s equal protection clause; finally the court held that Thompson had no protected liberty interest in visiting his family and friends on KCDC premises and therefore, he had no right to procedural due process.

An earlier case, *Daniel v. City of Tampa*,¹⁴⁸ had addressed a challenge to a trespass and ban policy as a violation of a non-resident’s First Amendment right of free speech. The plaintiff entered the property multiple times to leaflet and put up signs, and had been banned and arrested for trespass. As in *De La O*, the U.S. Court of Appeals applied a “forum analysis” to determine the extent of permissible regulation of speech on government property. As in the earlier case, the court held that Housing Authority property is a nonpublic forum, requiring only that regulation be content-neutral and reasonable. It explained, “The official mission of the Housing Authority is to provide safe housing for its residents, not to supply non-residents with a place to disseminate ideas.” It found that the Tampa policy was permissible as a reasonable means of combatting drug and crime problems in the development.

In the only public housing trespass case to reach the U.S. Supreme Court, the Court unanimously rejected a challenge based on First Amendment free speech grounds. In *Virginia v. Hicks*,¹⁴⁹ Hicks, a non-resident, alleged that Richmond’s policy was overbroad and violated his First Amendment right of free speech, his Fourteenth Amendment right of intimate association

¹⁴⁸ *Daniel v. City of Tampa Florida*, 38 F3d 546 (11th Cir 1994)

¹⁴⁹ *Virginia v. Hicks*, 539 U.S. 113 (2003)

(he claimed that he was delivering diapers to his baby), and his Fourteenth Amendment right of due process because of vagueness. The Court rejected his facial challenge to the trespass policy on First Amendment grounds:

As for the written provision authorizing the police to arrest those who return to Whitcomb Court after receiving a barment notice: That certainly does not violate the First Amendment as applied to persons whose postnotice entry is not for the purpose of engaging in constitutionally protected speech. And Hicks has not even established that it would violate the First Amendment as applied to persons whose postnotice entry is for that purpose. Even assuming the streets of Whitcomb Court are a public forum, the notice-barment rule subjects to arrest those who reenter after trespassing and after being warned not to return--regardless of whether, upon their return, they seek to engage in speech. Neither the basis for the barment sanction (the prior trespass) nor its purpose (preventing future trespasses) has anything to do with the First Amendment. Punishing its violation by a person who wishes to engage in free speech no more implicates the First Amendment than would the punishment of a person who has (pursuant to lawful regulation) been banned from a public park after vandalizing it, and who ignores the ban in order to take part in a political demonstration. Here, as there, it is Hicks' nonexpressive conduct--his entry in violation of the notice-barment rule--not his speech, for which he is punished as a trespasser.

The Court remanded the case to the Virginia Supreme Court for consideration of the other two claims. That court found that Hicks had not offered evidence of an intimate association with the child or the child's mother, and even if he did, he had no constitutional right to visit them on the Housing Authority's private property.¹⁵⁰

Hicks remains free to exercise whatever rights of association he may possess with his mother and his child; he simply may not do so on property owned by the Housing Authority.

The Virginia Supreme Court also rejected the substantive due process claim, determining that the policy was not impermissibly vague. It refused to apply the *Morales*¹⁵¹ precedent, in

¹⁵⁰ Commonwealth of Virginia v. Hicks, 267 Va. 573 (2004)

¹⁵¹ Chicago v. Morales, 527 U.S. 41 (1999)

which the U.S. Supreme Court invalidated an anti-loitering ordinance because it failed to clearly define a criminal offense in a way ordinary people could understand. The Virginia Supreme Court said *Morales* did not apply because the trespass and ban policy was clear, the non-resident had adequate warning, and the violation occurred on the private property of housing authority. Thus the substantive due process claim failed on two levels: first, it was not vague, and second, no right to loiter existed on private property.

The constitutional rights of visitors were also at issue in the ACLU's suit¹⁵² in Annapolis. In addition to the visitors' First, Fourth, and Fourteenth Amendment rights, *Sharps* alleged that the Annapolis banning policy violated the Fourth Amendment rights of the guests by authorizing stops without reasonable suspicion or probable cause.

Just one state court has ruled on a Fourth Amendment challenge that relates to the way a trespass and ban policy was enforced. In *State of Tennessee v. Hayes*, the Tennessee Supreme Court ruled that a police traffic stop to check identifications on a street ceded to the Chattanooga PHA constituted a violation of state and U.S. Constitutional protections against unreasonable searches and seizures.¹⁵³ In this case, the court found that a police officer's check of housing authority ID, coupled with checks of driver's licenses and insurance information, went far beyond the stated purpose of reducing crime and excluding trespassers. It cited the precedent of *City of Indianapolis v. Edmond*,¹⁵⁴ in which the U.S. Supreme Court said it would not approve "a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing." The Tennessee Supreme Court explained:

¹⁵² *Sharps v. The Housing Authority of the City of Annapolis*, Civil Case No. 02C09143799

¹⁵³ *State of Tennessee v. Hayes*, 188 S.W.3d 505 (2006)

¹⁵⁴ *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000)

The checkpoint at issue in this case was aimed not at apprehending those already involved in illegal activity, but at preventing some ill-defined group of persons from engaging in such activity in the first place, at least at a particular location...By the State's own admission in its brief to this Court, the CHA's interest in establishing the checkpoint was "reducing crime and excluding trespassers" and "enforcing lease agreement provisions intended to decrease crime and drug use." Such a checkpoint is not tenable under the Fourth Amendment.

A Fourth Amendment challenge arose again in 2010, when residents and guests filed a class-action lawsuit against the New York City Housing Authority and the City of New York for its practices of stops and arrests for trespass in so-called "vertical sweeps" of public housing developments. The plaintiffs challenged the practice on Fourth and Fourteenth Amendment grounds. In certifying the class, the District Court judge noted:

The procedures for conducting vertical patrols...direct officers to approach and question individuals in NYCHA buildings without reasonable suspicion of trespass, and to arrest for trespass those who fail to leave or affirmatively establish their right to be in a NYCHA residence. The record evidence at this stage shows that the NYPD's trespass enforcement policies and practices have resulted in thousands of trespass stops that apparently lacked reasonable suspicion, as well as large numbers of apparently unjustified trespass arrests.¹⁵⁵

[Davis was settled and the trespass policy amended by consent decree in 2015.]

In the most recent case, *Winston v. United States*,¹⁵⁶ a son visiting his mother challenged his ban by the District of Columbia Housing Authority and subsequent trespassing arrest. The "Barring Policy" in DC is a municipal regulation that considers guests to be "authorized persons" for entry, but also states: "Any resident's guest who engages in any activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents or DCHA employees or violates DCHA policy is an unauthorized person and may be barred for a

¹⁵⁵ Davis v. NYC, 10 Civ. 0699 (SAS), NYLJ 1202573873710

¹⁵⁶ Winston v. United States, 106 A.3d 1087 (D.C. 2015)

Temporary or extended period of time..."¹⁵⁷ The District of Columbia Court of Appeals overturned his trespass convictions, finding the original barring order invalid, because he had not been asked about whether he was a resident's guest. But Winston also challenged on constitutional grounds, and in a footnote, the Court addressed them:

Appellant also argues that the barring notice violated his right to intimate association with his mother and that his convictions violate due process because he has no right to judicial review of the barring notice (i.e., he can test its validity in court only by defying the order and facing prosecution, and he would still be convicted if the barring notice was erroneously but reasonably issued). These arguments are not frivolous, and similar arguments have been the subject of litigation in other jurisdictions...[citing Commonwealth v. Nelson and Diggs v. Housing Authority]. However, in light of our disposition that the government failed to prove that there was an objectively reasonable basis for the barring notice, we need not reach these issues, issues we would likely decline to consider in any event since they were not raised in the trial court...

Conclusion

The legal issues that arise from trespass and ban policies are complex, and are different for public housing residents and non-residents. A resident's right to have visitors, under common law, is a powerful challenge to broad PHA policies that ban visitors for ill-defined or vague safety concerns. I believe it is a challenge that would succeed in many cases.

The courts have been less sympathetic to constitutional challenges. Overall, these policies have withstood constitutional facial challenges to their validity; courts have found that PHA property is a non-public forum, and have often viewed the policies as permissible limitations on rights of expressive or intimate association. As applied, these policies have been held to a rational basis standard that most PHAs can meet because of concerns about crime. However, the courts have constrained some of the most draconian policies that interfere with statutory

¹⁵⁷ 14 D.C. M.R. § 9600.5.

rights of tenants to have invited guests in one's home. A number of policies (for example, those of New York and Annapolis) have been significantly changed to protect tenant and non-resident rights through agreements entered into as part of the settlement of a lawsuit, rather than by judicial decisions.

The specter of the "One-Strike" policy and the *Rucker* decision casts a long shadow upon common law rights of PHA tenants to have visitors. Lease provisions that hold a tenant accountable for any criminal activity within their household or by their guests, and allow eviction even in the absence of an arrest or conviction, pose more of a barrier to visitation than no-trespass policies. In the post-*Rucker* era, forbidding a visitor (even a family member) from coming to one's apartment may be a better option than losing one's public housing entirely.

However, to the extent that civil ban notices lead to criminal trespass charges, they potentially expose more residents to eviction proceedings. If these policies are to be more humane alternative to eviction, the targets should be non-residents and guests who are accused or convicted of serious crimes other than the trespass itself.

Returning to the questions posed at the beginning of this chapter, I conclude that policies that prevent an invited guest from coming on to the premises can pass legal muster. However, a tenant's common law rights are a big hurdle, and the landlord must have a convincing argument that invited guest poses a threat to property or safety. In addition, I conclude that a tenant can legally be evicted for allowing a banned invitee to come on to the premises. Because of the *Rucker* decision, the bar for evicting a tenant in public housing is set quite low, and PHAs need only have reasonable cause to evict.

Chapter 5. CASE STUDY: YONKERS, NY

Yonkers, New York and public housing are inextricably linked in the public's consciousness because of a landmark court case that took decades to settle, widespread protests against court-ordered desegregation of new public housing units, and more recently, a book¹⁵⁸ and television (HBO) miniseries about the controversy.

Yonkers, an inner-ring suburb of New York City, is the fourth most populous city in New York State, with a total 2010 population of 195,506. It occupies 20 square miles, including 18 square miles of land and two square miles of water. It is bounded by the Bronx River to the east, and the Hudson River to the west. It borders the wealthier suburbs of Greenburgh and Hastings-on-Hudson to the north, and the Bronx to the south. The Saw Mill



River Parkway, the first section of which opened in 1926, divides the city into east and west sections; historically, and to this day, east Yonkers is majority white, while sections of west Yonkers are overwhelmingly non-white.

¹⁵⁸ Belkin, L., *Show Me a Hero*. New York, N.Y.: Little, Brown & Co., 1999.

In 1980, the Justice Department and the National Association of the Advancement of Colored People (NAACP) filed suit alleging that the city had a 40-year history of segregating its subsidized housing (and thereby its neighborhood schools) along racial lines. Nearly all of its 6,644 subsidized housing units (including 3,330 public housing units and 3,314 privately-owned units built with HUD project-based assistance) were located within a one square mile area in southwest Yonkers that was overwhelmingly non-white. The suit was the first to target both housing and school segregation; it was also one of the few suits in which a federal agency was a plaintiff (Justice Department) and a federal agency a defendant (HUD, named as a third-party defendant because it had approved the sites selected by city officials).

In 1985, Judge Leonard Sand found that the City of Yonkers and its Board of Education had intentionally and persistently segregated its public housing and its schools. The decision documented that 98% of Yonkers' existing subsidized housing units were located in the southwest, an area that contained 81% of the City's minority population, with the remainder being senior developments (with majority white residents) in the east. The judge ordered Yonkers to build 200 units of scattered site public housing in the next three years (with funds previously received), and build or reserve 600 affordable housing units (in the longer-term) in the east part of town. The decision set off a protracted legal battle by the city against the remedy, which did not end until the city, facing fines of \$1 million a day, capitulated in 1988.

The remedy itself was the brainchild of architect Oscar Newman, who was retained by the city to design the additional units. As I discussed in Chapter 3, Newman had popularized the idea that high-rises themselves attracted crime and criminals because they did not have private spaces that residents would feel responsible for protecting and safeguarding. Yonkers' officials

sought to assuage fear of increased crime on the east side by using Newman's architectural theories. Peter Smith, the executive director of the Yonkers housing authority at the time, was quoted as saying of the largest high-rise, "If we ever replicated another Schlobohm, I think it would be an obscenity."¹⁵⁹ In a recent interview in *Slate*, Joseph Shuldiner, the head of the Municipal Housing Authority of the City of Yonkers (MHACY), commented on the townhouse design:

Oscar Newman had his own view of what housing should be like. There are no common spaces, no space for recreation, no playgrounds. Each townhouse has its own fence and backyard. There are seven different locations and no community space, so if the residents want to meet somewhere and it's more than the amount of people who can fit in an apartment, they'd have to meet in a library or school. Because of the nature of the scattered sites, they aren't all in one neighborhood. ... There are specific things about the design that we wouldn't have put in if we were designing it.¹⁶⁰

The case did not officially end until 2007, when the last of the 600 affordable units were built in east Yonkers. An early evaluation of the neighborhood impact of the scatter-site public housing units found no evidence of "panic sales" or detrimental effects on home prices, two of the stated fears of the residents of the receiving neighborhoods.¹⁶¹

This case study is about the more than 3,700 public housing residents who remained in southwest Yonkers, still heavily segregated in aging high- and low-rise developments. The 2010 Yonkers Consolidated Action Plan noted that the city's zoning exacerbates the poor distribution

¹⁵⁹ Rimer, S., "Yonkers anguish: Black and white in 2 worlds." *New York Times*, December 22, 1987.

¹⁶⁰ Blumgart, J., "Yonkers affordable housing fight isn't over." August 31, 2015. Retrieved from http://www.slate.com/articles/business/metropolis/2015/08/show_me_a_hero_finale_an_interview_with_yonkers_housing_authority_chief.html

¹⁶¹ de Souza Briggs, X., Darden, J.T., Aidala, A., "In the wake of desegregation, early impacts of scattered-site housing on neighborhoods in Yonkers, NY." *Journal of the American Planning Association*, 1999; 65(1):27-49.

of affordable housing in Yonkers;¹⁶² most of the southwest is zoned for multi-family residential, whereas most of the rest of the city is zoned for single-family residential. Thus, the southwest, with high rates of minorities and low-income people, will continue to be home to most affordable housing development in the city. In *Slate*, Joseph Shuldiner commented on the need to improve, not abandon, poverty-concentrated areas of public housing:

If you look at Judge Leonard Sand's decision 30 years ago, he argued that if all the public housing was built in one neighborhood, the answer is to build it in another neighborhood. But if all the upwardly mobile minority people move to other neighborhoods, the result is that you've left behind even worse concentrations of poverty. Physically doing it is tough enough, but the philosophical issues are even more difficult.

We really need to maximize the number of viable communities with affordable-housing opportunities. That means both getting affordable housing into already viable communities but it also means making the poverty-concentrated areas viable so that they will attract other-than-low-income people.¹⁶³

The first housing project built in Yonkers was Mulford Gardens (1940), a 12-acre development of 17 interconnected, 3-story buildings with 550 units. It was followed by Cottage Place Gardens (1942), with 14 3-story buildings and 250 units. After the passage of the National Housing Act of 1949, the city built 36 more subsidized housing projects between 1949 and 1982, 34 of which were located in southwest Yonkers. The largest was the Schlobohm Houses (1953), with eight 8-story buildings and 411 units, and Calcagno Homes (1963), with two 8-story buildings, one 4-story building and 278 units.

¹⁶² Yonkers FY 2010 Action Plan, Narrative Responses. Retrieved from <http://www.cityofyonkers.com/home/showdocument?id=5450>

¹⁶³ Blumgart, J., "Yonkers affordable housing fight isn't over." August 31, 2015. Retrieved from http://www.slate.com/articles/business/metropolis/2015/08/show_me_a_hero_finale_an_interview_with_yonkers_housing_authority_chief.html

In 2004, MHACY received \$20 million in Hope VI funding to demolish the severely distressed Mulford Gardens, and replace it with a majority of mixed-income, mixed finance housing. The Mulford site is now occupied by the privately co-managed Park Vista at Croton Heights (2009), a six-story family building with 60 units (18 public housing units), and Grant Park at Croton Heights (2011) a privately co-managed, four-building complex with 100 units (32 public housing units). All together, MHACY lost 20% of its units with the Mulford demolition.

In 2010, MHACY received a CHOICE neighborhood planning grant and subsequently used a mix of public-private financing to begin to redevelop Cottage Place Gardens. The plan called for redeveloping an abandoned school adjacent to the property, and for demolishing 56 units (3 buildings) in Cottage Place Gardens. When the plan is fully implemented, the 56 units will be replaced by 73 public housing units in mixed income buildings, making this a rare instance of redevelopment increasing the public housing inventory. The first building, Schoolhouse Terrace, opened in 2015.

Also In 2015, Yonkers successfully applied to HUD's Rental Assistance Demonstration (RAD) Program, which means that it will convert its units to long-term, project-based vouchers. The idea is to use tax breaks and subsidies to draw private developers to renovate and manage the buildings.¹⁶⁴ With guarantees about rent limitations, residents' rights, and the rights of return, the program will convert public housing to private units with public subsidies. In the first phase, MHACY will redevelop 910 units in 9 sites: Walsh Road Homes (299) (three 8-story buildings for seniors); Schlobohm (411), and the scatter site townhomes (200 units in 40 buildings, the last of which was built in 1993).

¹⁶⁴ Cohen, R.M., "The RAD-ical Shifts to Public Housing." August 2014, *American Prospect*.

MHACY remains the second largest public housing authority in New York State, now owning and managing 2,100 public housing units in 18 residential sites. About 10% of the units are townhouses, with the rest situated in multi-family apartment buildings. Its current inventory is listed in the table below, and mapped in Figure 1 (phase I RAD conversions highlighted). MHACY also administers the Housing Choice Voucher (HCV) Program, with more than 2,800 apartments leased to low-income tenants by about 800 private landlords. As of May 2015, 3,193 (87.6%) of the Housing Choice Vouchers were being utilized. The Housing Choice Vouchers administered by MHACY are primarily tenant-based, with only 8% being project-based vouchers at this time. All of the public housing units are occupied, and as with most public housing authorities, MHACY has an extensive waiting list. As of May 2015, there were approximately 3,005 applicants on the waiting lists with an annual turnover of 84 households. MHACY closed the family public housing waiting list in December of 2012 and reopened the senior public housing waiting list in October 2014. The Section 8 voucher waiting list has more than 11,000 names and at current rates of turnover, would not be open for at least 25 years.

Table 2. Present MHACY Properties (**Bold = present PH units**)

	Built	Status	Units	Type
<i>MHACY developments</i>				
Cottage Place Gardens	1942	(2 buildings being redeveloped 2014)	250 191	Family/Senior
Schlobohm Houses	1953		411	Family
Hall Homes	1962		48	Senior
Loehr Court	1962		110	Senior
Calcagno Homes	1964		278	Family
Walsh Road Homes	1967		299	Senior
Curran Court	1967		186	Senior
Kris Kristensen Homes	1967		32	Senior
Flynn Manor	1971		139	Senior
Martinelli Manor	1988		48	Senior
Troy Manor	1988		55	Senior
O'Rourke Townhouses	1992		45	Family
R. Valentine Townhouses	1992		14	Family
Doran Townhouses	1992		28	Family
Andrew Smith Townhouses	1992		28	Family
Albert Fiorillo Townhouses	1992		24	Family
Regan Townhouses	1994		44	Family
Christopher Townhouses	1994		14	Family
<i>Co-managed properties</i>				
Park Vista at Croton Heights	2009	on former Mulford site	60 (18 PH)	Family
Grant Park at Croton Heights	2011	on former Mulford site	100 (32 PH)	Family
School House Terrace	2015		50 (26 PH)	Senior
Total public housing units			2,100	



MHACY's PROPERTIES

- A. Hall Homes
- B. Loher Court
- C. Schlobohm Houses
- D. Walsh Road Homes
- E. Calcagno Homes
- F. Curran Court
- G. Kris Kristensen Homes
- H. Flynn Manor
- I. Cottage Place Gardens
- J. Martinelli Manor
- K. Troy Manor
- L. O'Rourke Townhomes
- M. Valentine Townhomes
- N. Doran Sr. Townhomes
- O. Smith Townhomes
- P. Fiorillo Townhomes
- Q. Christopher Townhomes
- R. Reagan Townhomes
- S. Croton Heights Apartments
- T. School House Terrace

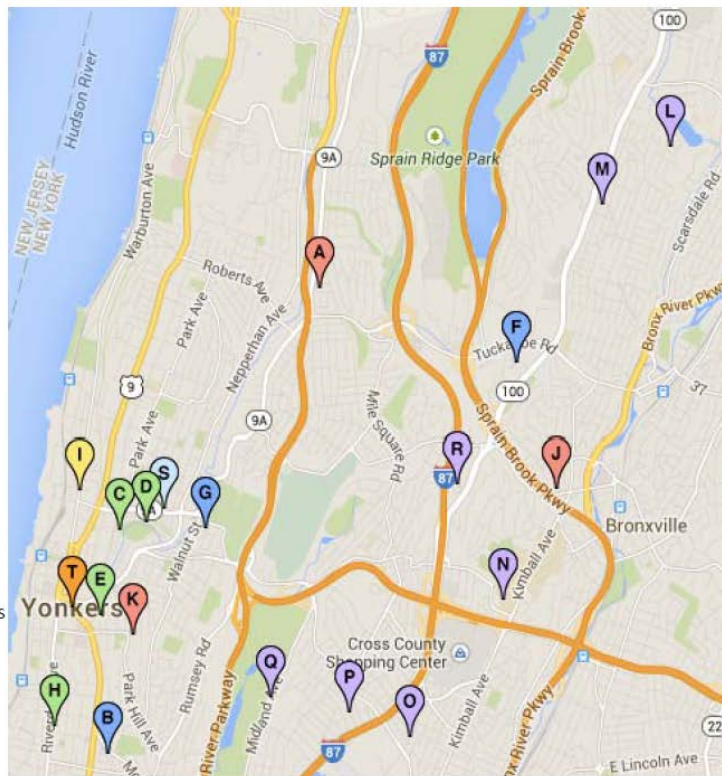


Figure 1. Location of MHACY properties
(Letters L-R point to scatter-site townhomes built as part of case remedy)

The demographics of MHACY, compared to Yonkers as a whole, is shown in Table 3 below.

The overwhelming majority of black and Hispanic MHACY residents live in the family developments, while almost all of the white residents live in senior developments. The racial composition of public housing changed little from 1970-2010. In contrast, the city of Yonkers has changed considerably. The white, non-Hispanic population in Yonkers has decreased from almost 90% in 1970 to 41% in 2010. At the same time, the Hispanic population has increased from 3.5% to nearly 35%.

Table 3. Demographics of Yonkers and MHACY Residents, 2014

	Yonkers	MHACY Public Housing
Total Population	195,979	3,729
% elderly (>62)	17.9	25
% white only	55.8	63
% black only	18.7	35
% Hispanic (any race)	34.7	56
# Housing units	80,389	2,070
Median household income	\$59,195	\$13,615
% Persons below poverty level	15.6	90

The Policy

The MHACY Board of Commissioners approved the “Non-Resident Bar-Out Policy” (Appendix A) in April 2009. An introductory statement notes that “the enactment of this bar-out policy enables the MHACY to deny non-residents who have engaged in such criminal activity access to MHACY property.” Table 4 lists the specific offenses and the duration of the bar-out:

Table 4. MHACY Bar-Out Policy Offenses and Duration

Offense	Duration of Bar-Out
Trespassing (not primary offense) Violating Protection Order Criminal Possession of weapon Disorderly/obscene conduct	Two Years
Assault, gang assault (felony), gang activity	Five Years
Possession or sale of controlled substance (felony) [“drug dealing”]	Ten Years
Homicide, incest, rape	Lifetime

The policy clearly delineates the procedures involved in a bar-out. Upon notice to MHACY from the Yonkers Police Department or other law enforcement agency that a non-resident has been arrested or convicted of one of the criminal activities on MHACY property, a “Notice of Exclusion” is issued, the violation of which will result in a charge of criminal trespass. The policy specifies the content of the notice (date, crime and date of crime, time period for the bar-out, rights to appeal, how to apply for Special Access or Emergency Access, who may issue the notice, and how it will be served to the non-resident). It requires that the bar-out list, including names, and effective and expiration dates of the bar-out, be posted in each building, mailed to all residents, and shared with the Yonkers Police Department, at least four times a year. It specifies the process of appeal, rights to a hearing, and the criteria by which the exclusion can be withdrawn. Importantly, one of those criteria is proof that the criminal charge was dismissed. It also leaves some discretion to an Informal Hearing Officer to withdraw the notice by determining “that there is a reasonable probability that the non-resident’s future conduct would not be likely to affect adversely the health, safety, or welfare of MHACY employees and residents.” The Hearing Officer can consider “evidence of the non-resident’s rehabilitation” since the offense, such as school record, participation in job training, and letters from prosecutors or judges. It delineates how barred non-residents can apply for special access if they have parental visitation rights or are caregivers of disabled residents, minor children or grandchildren. It specifies the terms of special access (direct ingress and egress to a specific apartment only), and allows residents to appeal denials of special access. Finally, it delineates the process for requesting emergency access.

Policy development. Review of documents reveals that the bar-out policy was part of a package of security measures implemented by Executive Director Joseph Shuldiner when he arrived in 2007. The MHACY Board of Commissioners first authorized the implementation of an unspecified bar-out policy in June 2007. As Shuldiner wrote in the residents' newsletter in 2008:

At its June 12, 2007 meeting, the Authority Board of Commissioners approved a policy to support our use of security cameras and authorized the implementation of a bar-out policy under which the Authority can create a list of non-resident persons who are not welcomed on to Authority property. While the actual threshold for being placed on this list has not been finalized, it will include people who have committed crimes in the developments or have otherwise created problems for and interfered with the right to quiet enjoyment of the residents. This is just another step, along with security cameras, gates, security guards and police to provide you with the safest environment possible. It is unfortunate that we live in a society where some of these restrictions are necessary, but security and the feeling of security are very important parts of a desirable living environment.

The first target of the limited-access initiative was Schlobohm Houses, the largest family development. MHACY reinforced a large fence, and installed a guard booth, staffed by a private security firm. By September 2007, residents had to show identification at the entrance gate; all visitors had to give the security guard their name and the name of the resident they were visiting. Parking was reserved for residents with current parking permits; other vehicles were allowed in only to pick up or drop off passengers or packages.

By official accounts, the changes led to an immediate drop in arrests in what had been the highest crime-rate area in Yonkers. The police department reported that arrests in Schlobohm had dropped from 30 in February 2007 to 2 in January 2008¹⁶⁵ after the security measures were implemented. A Yonkers City press release in December 2007 referred to the measures as

¹⁶⁵ Garcia, E., "Drug evictions from Yonkers' public housing fell in 2007." February 7, 2008. Retrieved from <http://www.lohud.com/>

successfully “creating a gated community”¹⁶⁶ at Schlobohm. Tenant representatives Roberta Allen, a public housing resident and a trustee of the housing authority's board, said she had seen significant quality-of-life improvements at Schlobohm in the past year. “You don't see gatherings and cars and guys hanging out in front of the buildings. You see children outside playing.”¹⁶⁷ Subsequently, MHACY distributed key fobs to residents that allowed them to activate the security gates without assistance from the guards, freeing up the guards to better focus on visitors. In early 2009, the same limited-access policy was implemented in Calcagno Homes after installation of security cameras and completion of a new fence and guard booths.

After these parts of the security package were in place, the MHACY Board approved the bar-out policy. The first bar-out list, published in the April-June 2009 newsletter, contained 12 names. Since then, the list has included 85-100 names on average.

Security and Police. MHACY contracts with a private security firm to staff the guard booths at Schlobohm and Calcagno, and to drive through other developments, including Cottage Gardens. Security guards also respond to management or resident complaints about low-level disturbances, such as loud noise. Until September 2014, the Yonkers Police Department had a dedicated Housing Unit based in the Fourth Precinct that provided specialized patrols at Schlobohm, Calcagno, and Cottage Gardens, with supplemental funding from MHACY. Yonkers police explained the rationale for a separate unit: “As a result of being in a specialized police unit, Housing Police Officers are able to interface with local residents and community leaders.

¹⁶⁶ City Of Yonkers. “Mayor Amicone tours new & improving Schlobohm housing.” [Press Release]. December 20, 2007. Retrieved from <https://www.highbeam.com/doc/1P3-1402519921.html>

¹⁶⁷ Garcia, E., “Drug evictions from Yonkers' public housing fell in 2007.” February 7, 2008. Retrieved from <http://www.lohud.com/>

These officers can more readily distinguish between offenders and law abiding community residents.”¹⁶⁸ However, the Housing Unit was disbanded abruptly In September 2014, in the wake of a police reorganization. Policemen from the Fourth Precinct now respond to crime-related calls in public housing, as they do in the rest of the precinct.

Site Visit

For this case study, I conducted two site visits to Yonkers in December 2014 and interviewed Shuldiner, MHACY’s executive director, project managers of the three family developments with the highest crime rates (Schlobohm, Calcagno, and Cottage Gardens), and two assistant project managers at Schlobohm. Each project manager had been with MHACY for more than 10 years, and they had rotated through other developments, including senior sites and the now-demolished Mulford Gardens. I conducted a focus group of five residents at the Schlobohm management office in December 2014. They were a convenience sample of residents who could offer perspectives on how the policy affected ordinary residents, rather than the resident leaders. They were a mix of older and more recent tenants; one had lived in Cottage Gardens for 20 years before moving to Schlobohm. Two were black and three were white Hispanic. I visited each of the three developments, and accompanied Schlobohm staff on an unannounced inspection of a unit. Subsequently, I interviewed by phone the former head of the Yonkers Police Department Housing Unit, Lt. Andrew McLaughlin, since he was unavailable during my visits.

¹⁶⁸ Yonkers Police Housing Unit. Retrieved from <http://www.yonkersny.gov/Index.aspx?page=2141>

Observational Data. The limited-access policies are unmistakable at Calcagno and Schlobohm: both have high iron fences, guard booths at the entrances, and prominent trespassing signs.



Figure 2. Calcagno Homes, Resident Entryway (by key fob)



Figure 3. Calcagno Homes, guard booth



Figure 4. Schlobohm Houses, fencing and gates



Figure 5. Schlobohm Houses, guard booth

In contrast, Cottage Gardens is open to vehicles and pedestrians. At the time of my visit, it was undergoing significant construction around two empty buildings, had no front or back gate, and no front desk for check-in. It is laid out in a circle, with two entrances and winding inner streets, but no through street. As its name implies, it was designed to have a “cottage” feel with many small buildings, each with its own entrance. No-trespass signs are posted throughout the development, although several were defaced or barely legible. A few men were standing around the entrances, talking. As I was looking around, one asked me if I needed help finding something, and directed me to the project management office. All entrances to the buildings were locked and access controlled through key fobs.



Figure 6. Cottage Gardens, courtyard view



Figure 7. Cottage Gardens, no-trespass signs

Schlobohm’s limited-access policy works as advertised. I drove up to the Schlobohm gate, and told the guard I was there to meet with the manager. The guard informed me that only residents could park inside the development, and told me that I might find parking in a lot down the street, “if there are any spots.” When I parked and returned to the gate, the guard asked me for ID and had me sign in, and directed me down a long path to the building with the management office. The streets of the development itself were quiet, with no one sitting or standing outside.

I was early, and managers invited me to join them as they and a member of the maintenance staff conducted an unannounced inspection of a unit to ensure that a washing machine, which tenants are not allowed to have, had been removed. The managers explained that they conducted unannounced inspections (as allowed by the lease) for safety issues or infractions such as having long-term visitors not on the lease.

The hallways, elevators and stairwells at Schlobohm are old but well-maintained. The interior seemed as quiet as the grounds. When no one responded at the unit's door, they entered with a key. A teenager emerged from a back bedroom, saw the managers, and said nothing. They did not find a washing machine, but wrote down that a number of outlets had been overloaded, impermissibly, with extension cords. They said that the tenant would be notified and warned.

The project managers here negotiate a delicate balance between their roles as agents of the landlord, responsible for enforcing rules, and as advocates for their tenants, handling anything from maintenance complaints to exercise classes to afterschool programs. "We're their point of reference for most everything," one manager said. When asked, the project managers said they considered themselves advocates, and the residents their "clientele". They thought that this role was compatible with enforcing and monitoring compliance with housing authority rules because of their responsibility to ensure safe housing and to preserve the quality of life in the development as a whole.

Interview/focus group data. I report here on the themes that relate to my research aims: perceptions of safety, crime control, quality of life, visitor access, and fairness, and illustrate those themes with direct quotes.

Perceptions of safety. Residents and managers described their developments prior to the bar-out policy as extremely dangerous places. All respondents reported that residents felt victimized and often afraid to walk through their developments. Drug dealing was rampant, and violent crime often resulted from clashes between rival gangs and drug dealers. A resident recalled:

I'll say a few years back there were a lot of shootings going on down here, a lot of them. People were dying; they had memorials of people. There were a lot. I'm saying maybe go back five, six years.

A project manager said that residents rarely ventured out at night, and that even police and delivery people felt unsafe:

Years ago, even in the sites, so Calcagno and Schlobohm and there, the cops didn't even like to go in there. You know what I mean? And if there was delivery... the Chinese people, delivery people, would refuse to go in.

Another, more recent resident talked about what she had heard from others about Schlobohm before the gates went in:

So I have a neighbor that... she has more than ten years here, and she told me that... all the time I talk to her and she tell me some history ... one time she told me that she saw people that throw things through the windows and things like, that taxis don't come inside before, a long time ago.

I found considerable consensus that residents felt safer after the implementation of the security measures, and safer in their developments than in the surrounding neighborhood. The measures were seen as creating a safe haven from the high-crime areas in which the developments stood. A number of residents expressed this concept as a feeling of quiet, of limiting the "action" that they associated with criminal activity. They had notice a large decrease in the amount of "loitering" in the development.

Well actually, being a resident, I feel safe. Me, I go to work, school, and take care of my kids. I come and go. But as far as the action, it's...they have it contained where you have to sign in and things like that, so I think the security and everything, if we all work together, would be great. I have no problems.

Other residents agreed that safety had improved compared to the neighborhood right outside the gates of Schlobohm:

I don't think they [neighbors] feel as safe as in here because this is basically like a calm building. So on the outskirts of it you still have the hanging out and things like that, but as far as within this development, they have it confined.

It's like you don't see people hanging out, the hallways. Everything is like real down to a minimum. There used to be a bunch of people hanging against your building but not anymore.

Most residents talked about the cameras, fences, and guards as being important to their feelings of safety, but made little reference to the bar-out policy. They thought of the bar-out policy as a feature of the larger package of security measures, rather than as intervention in itself. In fact, the physical changes that took place (fences, guard booths, cameras in Schlobohm and Calcagno; cameras only in Cottage Gardens), were readily apparent before the bar-out policy was implemented, and were often perceived as a prerequisite to the policy. Shuldiner noted,

I would imagine that the bar-out list, to a large extent, is probably not a big issue at this point because it's been around, and you know, in and of itself, it's not something that I would say, "Hey, look, we have this. Therefore, everybody's safe." I mean, you know it is a component of a larger strategy, whatever that might be... which factor did it? You know, was it the police? The guards? The fencing? The cameras? The bar-out in general? Increasing, you know, increasing support of the residents?

Shuldiner remembered that the guards, gates, and cameras were not immediately embraced by all residents.

We've had a lot of rancorous meetings in which, you know, when we put in the guards and the, and the booths, and stuff like that, they claimed we were making it a prison, locking them in. And I explained to them, no, the purpose of prison is to keep people in. The purpose of this is to keep people out. Slightly different.

One three-year resident drew a distinction between the reaction of residents to the imposition of a new rule and the acceptance of new residents (like her) to a rule that already exists. Having entered into public housing with the security measures in place, she had no problem with their use:

I know that sometimes some people, they are not accustomed to rules and then when they put rules in a place where they're are not accustomed, so there will be a lot of people that they will disagree. Well when you go someplace and the place has the rules, so everybody's fine because it just comes with the place and the rules are over there. I feel safe. I feel like my kids are safe.

Crime Control. The security measures (including the bar-out policy) are widely perceived as being effective in reducing the level of violent crime in the three developments. Shuldiner noted that there had been no fatalities on MHACY property since July 2010, at a time of significant gang wars and killings in the neighborhoods and larger community. [N.B. Yonkers police reported 29 homicides in the city from 2010-2014]. Housing authority staff and police cite three mechanisms at work: displacing crime (at least initially) by keeping non-resident criminals out, displacing crime by moving residential criminal activity off housing property, and preventing crime by disrupting the potentially dangerous interactions between resident and non-resident rival gangs. Shuldiner recalled that when the security measures were implemented, he had heard some objections from the neighbors about displaced crime:

So what happened after Schlobohm, the immediate thing when we really restricted Schlobohm, many of the bad guys just moved out into the adjoining neighborhood, and we were getting complaints...our next-door neighbor, the Kingdom Baptist Church, Reverend Hassell, he came to me after we did all this and said, "Well, your policies have given me an opportunity to see my congregants close up and personal," because we moved all the bad guys right in front of his church. So, yeah, but that's not my work scope to make Yonkers a safer place for everybody. I just have my responsibilities.

Lt. McLaughlin described how the security measures worked by preventing potentially dangerous interactions between rival gangs and groups:

The policy and the gate made Schlobohm a safe haven for kids. Twenty or 30 kids might tangle on the corner, but some could run into the development for safety and the others couldn't follow. Before, there was lots of gang activity, we had maybe four or five shootings...

It appears that this delineation of protected space is important to an effective trespass and bar-out policy; both Shuldiner and the project managers noted that the policy was easier to implement and enforce at Schlobohm and Calcagno because of the gates and guards than at Cottage Gardens. Shuldiner said,

I would assume it's less well enforced in places we don't have a presence, a 24-hour presence, or we don't have any restrictions, you know, if you just come in off the street, there's nobody there, so how would we even know you were there...it's up to a resident to let us know, or if it's during the day and somebody recognizes them from our staff, sure. But it's obviously more enforced in Calcagno and Schlobohm, but that's where the focus of our crime efforts are.

Lt. McLaughlin thought that the fences were particularly helpful in enforcing the bar-out policy. Without them, he said, enforcing the policy involved much more intensive, and intrusive, methods of policing:

Fences help delineate the area not to be trespassed. It's harder in Cottage where there are no fences. There we'd sometimes do vertical patrols and ask for ID, but that took more manpower.

The delineated space, he explained, made the developments “quieter”, and that had sent a strong message to the drug dealers and gang members who lived in the developments. They responded by changing some of their more overt criminal behaviors:

People would be more low-key about their behavior, knowing that they could be seen, that they couldn't hide. They would stay under the radar.

Shuldiner acknowledged that that gang members continue to live in the developments, and that the security measures are not designed to remove them from public housing. He noted that they too had families that needed protection.

Just anecdotally, after we implemented the stuff in Schlobohm, and I went to a meeting, one of the gang leaders came up to me with his like three-year-old son and said, "Thank you for what you're doing. It's a lot safer for my kids now."

Quality of life. Residents said that the quality of life had improved dramatically in the developments in the past seven years. A number of residents talked about how much better the developments were for the children.

I'm raising a boy and a girl and I don't have to worry about looking over my shoulder every five minutes. So as far as that, I see a positive change.

As far as the kids. They have an afterschool program and different things like that. So that's a big help too. You have an alternative for the kids not to be on the streets.

One project manager thought that the security measures and increased police activity against gangs had helped residents feel freer to leave their apartments.

I think people just wanted a better way of life after a while. And the cops were on the gang units and dispersed them, and just over the years everybody got on board. And then the good...the hardworking families...because there are a lot there that would be locked in their house, now they're able to come outside, go on the playground.

But others alluded to a trade-off between the vibrancy of their surroundings and safety. A former Cottage Gardens resident said that she missed the openness of Cottage to the fenced and gated atmosphere of Schlobohm:

Personally, over there I still see...it's more movement because they have a little more freedom. As far as we...that gate closes at a certain time. Over there they have two entrances open.

Shuldiner said that one of the immediate results of implementing security measures was a drop in the amount of activity on the grounds at Schlobohm:

I think in most places they feel safer than they had felt. I mean if you look at footage, the camera stuff in Schlobohm when they first came in '07, it was wall-to-wall cars. Just, you know, totally open. Cars everywhere. People out in the streets. Which can be good. It's not necessarily bad. And now when you go, you know, there are parked cars but there's no double parked, triple parked cars. It's much quieter...

Longer-term residents had a different reference point, and from the perspective of different generation, felt that the quality of family life in public housing had decreased over time. Over a longer term, they thought that parents and neighbors were providing less supervision for their children and felt less responsible for each other.

When I lived in Cottage, it was a few years ago, my daughter was little. It was the time where you could just send your child outside and just run and play. And then when we all watched each other's children, I see your child over there doing that, I tell your child not to do that because I'm standing out there and your child's there. But times are a little different now. My daughter's 27. And I lived in Cottage... I moved to Cottage when she was three, so we're going back a few years now.

I see a difference. You can go over there now any time and see a kid. Isn't it school hours? Why you outside? You can't say it's the administration, it's the parents. Do what you got to do as parents then you won't have that problem.

Both long-term and shorter-term residents pointed to the need for increased community involvement as key to any further improvements in quality of life. One resident talked about the need to work toward a common purpose, whether that meant asking a teen why he wasn't at school or helping to keep the hallways clean.

But if you don't try to work together it's going to be hard, anywhere you go. I don't blame the administration. It's us 50-50. It [crime] doesn't have to be in a community. At a job, if you're not a team player, it's not going to fall into place.

Another mentioned that children and families have been hurt by recent cutbacks in the Yonkers schools, saying that parents had to “step up” because Yonkers in general, “was taking so much from the kids.” She talked about the lack of programs in music and arts, sports, and after-school activities.

Shuldiner also talked about the need for residents as a community to raise their quality of life, and to set standards of norms and behavior.

I think at best all we could ever do is, all the police can ever do is to create an atmosphere from which the community can build on. First, the community has to be safe enough to come out and do something... I think the bar-out policy is, again, a lot of crime stuff is psychological. I mean ...it's how you feel. The fact that we're imposing it means we care enough to impose it and that we're making efforts so that you as a resident can say, “Hey,” you know, we put in cameras. We have a bar-out. We have, we're paying for guards. Because in the end it's the standards the residents set. It's not the standards we set.

But I think also that, you know, if you can create an environment where people care about their neighborhood and care about their homes, there's less of that stuff. I mean, you know, when HBO came in to film, they had to put graffiti up. They had to put guards out ...they wanted it to look like it looked in the early 1990s, late 1980s, and they had to put in graffiti and they put in, hopefully, they removed it successfully. And they took fencing down, and they put garbage in.

Visitor Access. One of the biggest potential concerns about trespass and ban policies is their effect on residents' ability to have visitors. Although one project manager said some people complain when they have to sign in, the residents said they did not feel constrained and that their visitors were not subject to intrusive requirements. In fact, residents felt that they were entitled to security measures that paralleled those of wealthy people. One resident made

an unprompted analogy to having visitors screened by doormen (echoing Justice Ginsburg's analogy to gated communities):

I don't see how this is any different from downtown in Manhattan, in the doormen buildings that we have down on the higher end areas that considered it to be safe to have somebody be announced before they go upstairs....So I don't see the difference between the fact that we are on a lower income side than an upper income side. It's the same difference. Am I right, or am I wrong?

Shuldiner noted that visitors are not required to show proof of the person they are visiting, and if their names do not appear on the bar-out list, they simply walk into the development:

You know, right now if you don't have a job, you show an ID and you say where you're going, we don't know that you actually go there. And at Schlobohm you just go wherever you go. Who knows? I mean, the guards at the front and back can't see where you go necessarily and even if you went into the right building they don't know that you went to the apartment you said you were going to.

A project manager thought that visitation was more constrained by the One-Strike policy than by the bar-out policy. She felt that the One-Strike policy, while it did not directly address visitor access, did change residents' attitudes toward their visitors. She thought that residents saw the bar-out policy as a way to avoid eviction if their visitors had committed a crime. She described the interaction of these policies:

I think the trespass policy was more of a kick off of the One-Strike. I think once we started with the One-Strike policy, people were getting on board and they accepted less from their guests and their visitors. They wouldn't allow them to do whatever they wanted to do. They were very protective of their apartments and...their residency here. If they would do anything, it would be loss of property and it would be out of their control. If someone knew that their guest was on the One-Strike, was on the bar-out policy, they wouldn't really want that person associated with their apartment.

Fairness. Residents felt that the bar-out policy was fair because it gave people a chance to keep their apartments instead of being evicted if a visitor committed a crime. Although most

residents did not know exactly how someone got on or off the list, one knew of someone who was barred for “harassing his girlfriend” yet was allowed to visit his mother in a different development.

Shuldiner said that he had not received formal complaints from the residents or the people who have been barred. He ascribed this to the process and procedures that make it more likely that the policy is implemented fairly. He commented that the bar-out policy was drafted by a new general counsel who, “in her day job is a civil rights attorney, so we were going to implement it correctly.”

A project manager pointed to the committee structure as an important element of fairness and accountability. The bar-out decision is made by a committee, staffed by the general counsel and director-level executive staff. It does not include project managers, nor does it include Shuldiner, who hears all appeals. The project manager was happy not to participate in the decision:

I wouldn't want that job of bar-out. That's the good thing about us: one person does this, another person does that, and then we have the groups and committees. I think that keeps everyone safe and accountable. Yeah. We do that with a lot of things, even with admissions, the screening committee. There's a lot of ways that you can check and balance things out versus one person doing everything. No. I don't think that's good.

Shuldiner said that the appeals process promotes fairness and that exceptions are made. He recalled an example of someone who said, “I’m on the list but it’s my kid’s birthday. Can I come in?” He was allowed to do that. A project manager recalled another instance:

We had a family in School Street [Calcagno] that it personally affected and we were able to grant that person clearance – he was just going to School Street to

their mom, only visit with their mother who was elderly and sick but not any of the other sites and that stayed into effect. We do and we have made exceptions.

The policy is also perceived as fair because it represents a “conservative” approach that targets serious crimes with commensurate bar-outs. As one resident stated, “You’re on that list for a reason.” Shuldiner points out that “the length of time on the list has some relation to what it is you allegedly did.” Further, he specifically rejected the use of the policy to ban people for trespass.

We don’t put people on the list for things like, you can’t bootstrap it by arresting someone for trespassing and then barring them out for having trespassed...That’s absurd. I mean, they have to have actually done something.

Crime data. Unfortunately, since the Housing Unit was abruptly shut down, its data are not being made available to the public. Instead, I use city-wide data and precinct-level data to describe how crime rates have changed since the trespass policy was instituted. In Yonkers overall, UCR Part I offenses have decreased significantly in the past ten years. However, as shown below, most of that decrease is in property crime. Violent crime has decreased slightly, from 1,118 violent offenses in 2005 to 963 in 2014. That translates into a violent crime rate of 5.29 per 1,000 residents (national median is 3.8), and a property crime rate of 12.3 per 1,000 (national median is 27.3).

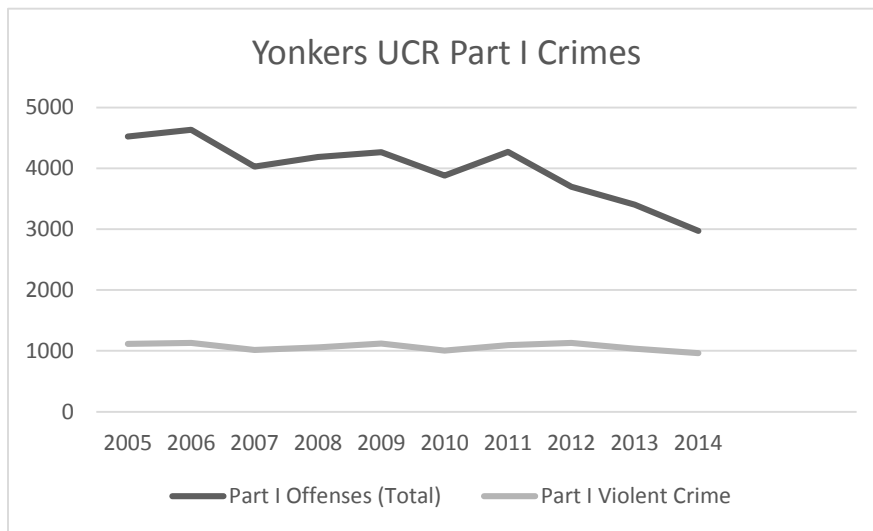
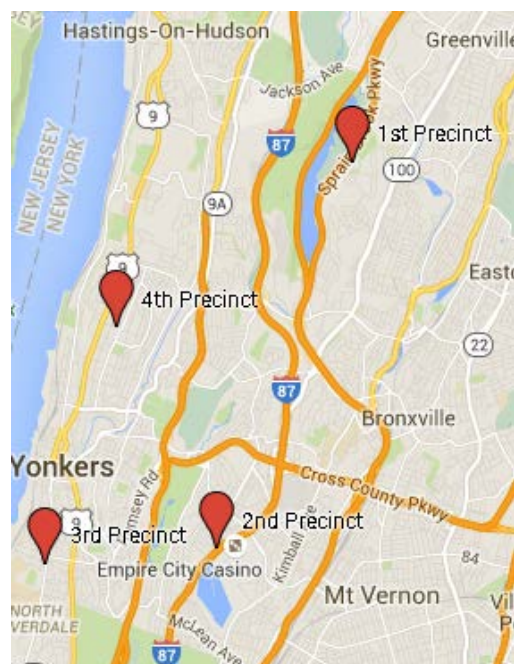


Figure 8. Yonkers UCR Part I Annual Crime, 2005-2014

To get a sense of how the trespass policy (and other security measures) might have affected crime rates, I looked at precinct-level data before and after policy was enforced. If the policy prevented crime, I would expect to see reductions in violent crime in the Fourth Precinct, where the housing unit was based; if it displaced crime, I would expect to see no change in the Fourth Precinct, or perhaps spillover effects in the Third Precinct, which is also on the west side.

As shown in Figure 9, I found little change in the Fourth Precinct, and little difference in the reductions across precincts. Given the anecdotal reports of large drops in crime at Schlobohm after the gates, guards and trespass policy went in, this is consistent with crime being displaced within the



Fourth Precinct, but not reduced overall. However, better data on the location of crimes are needed to reach any conclusions.

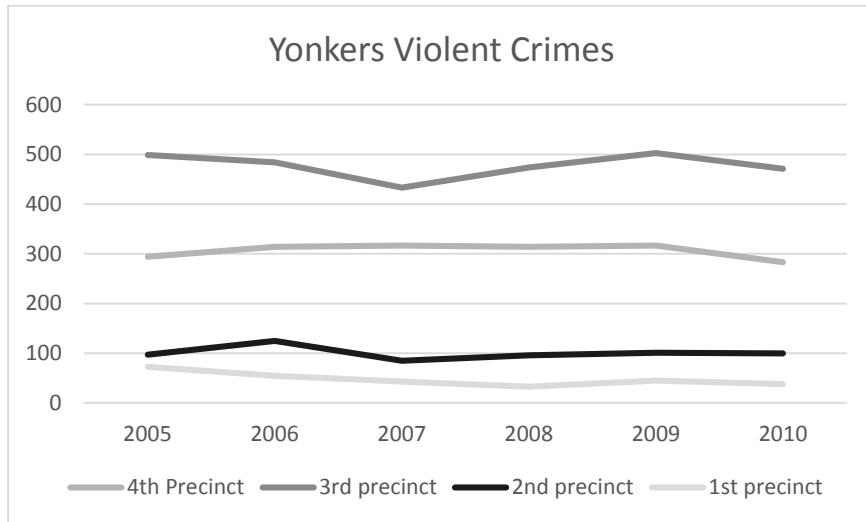


Figure 9. Yonkers Violent Crime, by Precinct, 2005-2010

Conclusions

Yonkers has successfully implemented its no-trespass policy as written, with built-in processes and procedures that make it more likely that the policy is perceived as fair to residents and their guests. These processes include appeals, exceptions, and a conservative approach that targets serious crimes.

An overarching theme across interviews was the concept of the no-trespass policy as a feature of a larger package of security measures, rather than a stand-alone policy. To public housing residents and managers, the effects of the policy are inseparable from the fences, guards, cameras and key fobs that were part of an overall a security strategy.

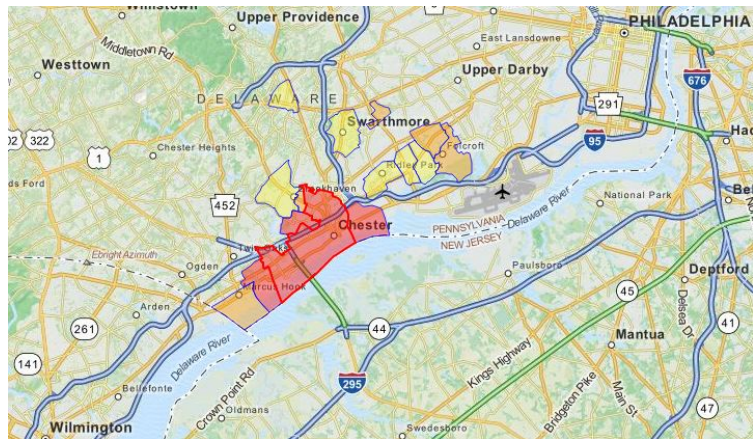
It appears that delineation of protected space is important to an effective no-trespass policy. This protected space then becomes a “safe haven” for residents and an easier area to police. In Yonkers, these measures were accompanied by procedures to assure visitor access, including a simple sign-in process (where there were guard booths) and electronic key fobs to minimize inconvenience for residents. This may have been an effective way to overcome initial resistance from residents to fencing and guard booths.

Another theme that emerged was the need for community involvement to support the policy and to further improve quality of life. Being able to “step out” into a safe space was seen as the prerequisite for being willing to “step up” as parents and community members.

Chapter 6. CASE STUDY: CHESTER, PA

The story of Chester, PA, is a story of an older city caught in the currents of deindustrialization and municipal corruption, with well-publicized, multi-system failures in housing, education, and the environment. As the Chester Housing Authority (CHA) Executive Director Steven Fischer said, the housing authority does not exist in a vacuum; the enduring problems of Chester provide the context, and the constraints, within which the CHA operates.

Chester, established in 1682, is one of the oldest cities in Pennsylvania, with a 2010 population of 33,972. It lies on the waterfront of the Delaware River, about 17 miles from Philadelphia and about 15 miles from Wilmington, Delaware. It occupies 6 square miles, including 4.8 square miles of land and 1.2 miles of water. It is located in the southeastern corner of Delaware County, whose population is 80% white. Chester's population is 75% African American. The city itself has long been segregated, with most of the white population now living in the northeast corner ("the hill"), where Widener University is located, and the majority black population now living on the south side, near the business district and industrial waterfront. Interstate 95 acts as a man-made barrier enforcing this color line in Chester.



Chester was once an industrial center, with shipyards, steel mills, aircraft engine factories, and a Ford Motor Company plant. From 1926-1973, a large lit sign above the electric company substation proudly announced its industrial heritage: “WHAT CHESTER MAKES MAKES CHESTER” (pictured below).



Figure 10. Famous illuminated sign: What CHESTER MAKES MAKES CHESTER [photo credit: oldchesterpa.com]

During World War II, Chester was a magnet for thousands of African-Americans, who migrated north for high-paying jobs building ships and supporting the war effort. The Sun Shipbuilding and Drydocking Company in Chester employed more blacks (6,000) than any other company in America during the war in completely segregated shipyards.¹⁶⁹ Most of these jobs left Chester as soon as the war was over. As in many other northern cities, manufacturing jobs moved south or overseas. Ford left in 1961, and Sun Shipbuilding closed in 1977. Since 1970,

¹⁶⁹ McLarnon, J.M., “Pie in the sky vs. meat and potatoes: The case of sun ship's yard no. 4.” *J Am Studies*. 2000; 34:67–88.

Chester has lost 40% of its population, although the decline has slowed in the past ten years. Today, fewer people live in the entire city than worked on the waterfront in 1943.¹⁷⁰

The first public housing in Chester was built to accommodate the large influx of workers during the war. Chartered in 1937, the CHA soon thereafter built four developments in the southwest section of the city, all strictly segregated. The first ones were rowhouse/barracks-style housing: Lamokin Village (1940), 350 units in 48 buildings; McCaffrey Village (1940), 350 units in 48 buildings; William Penn Homes (1942), 390 units in 32 buildings; and the Ruth L. Bennett Homes (1943), 350 units in 48 buildings. The last development of the 20th century was Chester Towers (1967), 300 units in two 13- and 14-story high-rises for seniors and disabled people.

Historically, Chester's politics were controlled by a small white Republican elite, the shipyard owners who strongly urged all their workers, black and white, to vote Republican.¹⁷¹ The Delaware County Republican "machine" was known for widespread corruption that touched state, county, and city politics, and the CHA, for more than 70 years. This era ended in 1979, when Chester Mayor John Nacrelli was convicted of tax evasion, bribery, and racketeering.¹⁷² Nacrelli had been CHA chairman before becoming mayor. Fischer commented,

Chester has a history of being rife with political corruption and the Housing Authority didn't escape that...it's an institution that a lot of federal dollars flow through, so there were a lot of jobs to be given out and the local political system

¹⁷⁰ Blumgart, J., "The housing crisis we don't talk about." October 20, 2014. Retrieved from <https://nextcity.org/features/view/the-opposite-of-gentrifications>

¹⁷¹ Hexter, K.W., Hill, E.W., Mikelbank, B.A., Clark, B.Y., & Post, C., *Revitalizing Distressed Older Suburbs*. Washington D.C.: Urban Institute, 2011.

¹⁷² Ibid.

*took full advantage of it. We are talking about what was probably the worst housing authority in the country.*¹⁷³

Over time, the landscape of Chester became dominated by abandoned and neglected properties, legal and illegal waste storage facilities, and a Superfund cleanup site. CHA properties fell into disrepair, and in 1989, CHA residents filed a class action lawsuit, alleging that CHA's neglect of its properties constituted "constructive abandonment." As detailed in U.S. District Court Judge Norma Shapiro's Findings of Fact,¹⁷⁴ by the end of 1990, there were 262 vacant units, 79 of which were vacant pursuant to a HUD-approved plan to demolish portions of William Penn Homes. At the end of 1991, the number of vacancies rose to 320, with 100 vacancies at William Penn. By the end of 1992, there were 405 vacancies.

In 1991, HUD took over the assets and operations of the CHA, finding that the CHA had breached its Annual Contributions Contract with HUD. HUD replaced the CHA's Board of Commissioners with William Henderson, Chief of Assisted Housing Management for HUD's Philadelphia regional office. As described in *Velez*,¹⁷⁵ conditions at the four oldest projects had deteriorated to near-unlivable conditions. Henderson visited Bennett, Lamokin Village, Penn, and McCaffery Village at the end of 1991 and reported that he did not walk through Penn because of concern for his personal safety; at Penn and Bennett, he observed that the vacant units had broken windows, and that trash was everywhere. His opinion was that William Penn was "clearly moving towards being an uninhabitable site" and that Bennett would be as

¹⁷³ Blumgart, J., "The housing crisis we don't talk about." October 20, 2014. Retrieved from <https://nextcity.org/features/view/the-opposite-of-gentrifications>

¹⁷⁴ *Velez v. Cisneros*, 850 F. Supp. 1257 (E.D. Pa. 1994)

¹⁷⁵ *Ibid.*

deteriorated as Penn in 6-12 months. Drug dealing was apparent at Bennett, McCaffrey, and Lamokin, and Henderson left Lamokin after observing a drug sale, fearing for his personal safety.

An inspection report in 1992 found that CHA units suffered from frequent sewer back-ups, leaks from steam and water pipes, weakened and buckled floors, plaster damage, deterioration to cabinets, peeling paint and electrical shortages, broken windows, missing screens, and inoperable locks. The inspectors wrote, "Trash and garbage lie everywhere. Wild dogs, birds and rodents abound on CHA properties, sustained by the bountiful garbage. The situation is totally out of control."¹⁷⁶

HUD failed to improve these conditions and consequently, Judge Shapiro ruled that the failure of CHA and HUD to rehabilitate vacant units constituted illegal, de facto demolition of public housing.¹⁷⁷ The court placed the housing authority under the receivership of Robert Rosenberg, who reported directly to Judge Shapiro. At the time, Rosenberg said that the CHA contained the most deplorable housing conditions he had ever witnessed in the developed world.¹⁷⁸ CHA remained under receivership from 1994 to January 2015, when Judge Shapiro returned control of the housing authority to its appointed Board of Commissioners.¹⁷⁹

The decline of public housing in Chester paralleled the decline of the city itself. In 1995, the state officially designated Chester as a distressed municipality (under Act 47, which makes the city subject to fiscal oversight and eligible for technical and other assistance). It operates under

¹⁷⁶ Velez v. Cisneros, 850 F. Supp. 1257 (E.D. Pa. 1994)

¹⁷⁷ Ibid.

¹⁷⁸ Kopp, J., "Chester Housing Authority employee gives final report." November 13, 2013. Retrieved from <http://www.delcotimes.com/article/DC/20131114/NEWS/131119672>

¹⁷⁹ Sullivan, V., "Judge terminates receivership of Chester Housing Authority." January 5, 2015. Retrieved from <http://www.delcotimes.com/article/DC/20150105/NEWS/150109856>

Act 47 to this day. In 1994, the state designated the Chester-Upland School District in financial distress, with the state taking over local control at various points. The School District remains bankrupt and one of the lowest performers in the state. For many years, Chester has been one of the most violent cities in the U.S., with one of the highest per capita murder rates in the country. It has been estimated that the likelihood that a Chester resident will be a victim of violence is 1 in 37 each year.¹⁸⁰ For a time in 2010, after a rash of homicides, the Mayor declared a state of emergency for 34 days, imposing a 9 p.m. curfew on five of the most violent areas. In 2014, Chester had an all-time high of 30 homicides, all but two by firearm.

The receivership, and federal oversight, changed the face of public housing in Chester. CHA had received \$36 million in HUD funding [under the Major Reconstruction of Obsolete Projects program] in 1992 to rehabilitate William Penn and the Ruth Bennett homes. The reconstruction built upon existing foundations but reduced the density in Bennett from 350 units to 261 units in 1996, and in William Penn, from 390 units (mostly single rooms) to 160 larger units in 1998.

Under the receivership, CHA received a series of Hope VI grants to redevelop the remaining distressed properties. In 1996, it received nearly \$15 million to demolish Lamokin Village, which had a 37% vacancy rate,¹⁸¹ and replace it with Chatham Estates; in 1998, it received \$10 million to demolish McCaffery Village, which had a 35% vacancy rate,¹⁸² and replace it with Wellington Ridge; in 2004, it received \$20 million to demolish the Chester

¹⁸⁰ Matza, M., "Chester crime statistics can be misleading." Philadelphia Inquirer, April 2, 2012.

¹⁸¹ Abt Associates, "Exploring the impacts of the HOPE VI program on surrounding neighborhoods."

January 14, 2003. Retrieved from abtassociates.com/reports/NeighCaseStudies_1-14-03_FINAL-A.pdf

¹⁸² Ibid.

Towers, and replace it with the Edgemont Apartments, Gateway Apartments, and Madison Apartments. The Hope VI grants led to striking improvements in the quality of housing (see Figures 11 and 12) but a net loss of 454 public housing units. In 1997, the CHA came off HUD's troubled list of housing authorities, achieving "standard performer" status, and by 2003, had achieved "high performer" status. Steven Fischer joined the CHA as executive director in 2005.



Figure 11. Lamokin Village [Photo credit: CHA Receiver's Annual Report, 2003-2004]



Figure 12. Chatham Estates [photo credit: CHA stock]

Meanwhile, the city of Chester has taken advantage of its status as a Keystone Opportunity Zone to lure high-profile businesses with tax abatements. These projects include Harrah's Chester Casino & Racetrack (on the Sun Shipbuilding footprint), which opened in 2007, and PPL Park, the home stadium of Major League Soccer's Philadelphia Union, which opened in 2010. Although then-Governor Ed Rendell said that the stadium would "change the face of Chester forever," it has not provided the economic boost to Chester's economy he had anticipated.¹⁸³ The Philadelphia Inquirer editorial board recently stated that the stadium was surrounded by "the same economic wasteland that greeted its arrival five years ago."¹⁸⁴ Fischer said,

I can tell you for a fact that hardly anyone turned up with a job at Harrah's. But nobody really wants to hear me say that or ask me that question, so it doesn't really get out that much. So certain politicians want people to believe that's been a boon to Chester, they can sometimes get away with it. The other big business development project that happened in my years was the building of the soccer stadium. So that was another snow job they got here. But even if you don't know anything about that industry, you know that they only work on the days when there's a game. And if you look at their schedule, maybe an average of once or twice a week there's a game. Half the time they're on the road. So what kind of permanent employment is that for anybody? And then even when they do have a game and you know they can say, "Well, you know, all these people are coming to Chester to see the game, and they're going to spend money." They have them strategically parked at the outskirts of the city to where they don't have to drive through all this and be scared. And where's the shops they're shopping in? They're all shuttered. Or they're not shops they want to go to, so, so it's just such a sham that, that's not the kind of economic development that will really work for a city in this shape. But it happens a lot, I've learned.

The end result of large-scale CHA development and the city's weak real estate market is that CHA now affects about 20% of Chester's rental stock. This includes 818 units of public housing,

¹⁸³ McCrystal, L., "Chester still awaits a big score in soccer." April 28, 2014, Retrieved from http://articles.philly.com/2014-04-28/news/49440009_1_ppl-park-philadelphia-union-chester

¹⁸⁴ Inquirer Editorial Board. "It's only a game." June 5, 2015. Retrieved from http://articles.philly.com/2015-06-05/news/63050692_1_nick-sakiewicz-ppl-park-chester

scattered over 10 sites, and 1,566 Housing Choice Vouchers (including 306 project-based vouchers, and 330 that are used outside of Chester). By most accounts, CHA is now the biggest and best landlord in Chester, a sea change from time of the lawsuit when, as Fischer said, “Even poor people wouldn’t want to live there.” In many ways, Chester has returned to the roots of public housing as guarantor of decent, affordable housing, rather than as a symbol or signal of substandard living conditions. As Edward Goetz has pointed out, the “overwhelming majority” of public housing developments “provide a better alternative than private-sector housing in poor neighborhoods.”¹⁸⁵ Public Housing and Section 8 waiting lists have been closed since 2001 except for brief, intermittent periods in 2008, 2011, 2012, and 2015 (November). CHA estimates that people on the list have about a five-year wait for access to the units or a voucher.

¹⁸⁵ Bloom, N.D., Umbach, F., Vale, L.J., & Heathcott, J., Eds. *Public Housing Myths*. Ithaca, N.Y.: Cornell University Press, 2015.

Table 5. Present CHA properties [**bold=present Public Housing (PH) units**]

	Built	Status	Units	Type
<i>CHA development</i>				
William Penn Homes	1942	Rehabbed 1998	390 160	Family
Ruth L. Bennett Homes	1943	Rehabbed 1996	350 261	Family
Chatham Estates	2002		110	Family
replaced Lamokin Village	1940	Demolished		
Wellington Ridge	2003		110	Family
replaced McCaffrey Village	1940	Demolished	350	
Chatham Terrace	2008		48	Family
Heartley Homes	1997	Acquired 2004	10	Family
<i>Co-Managed Properties</i>				
Edgmont Senior Apts.	2010		87 (25 PH)	Senior
and Madison Apts.	2011		38 (13 PH)	Senior
and Gateway Senior Apts.	2013		64 (23 PH)	Senior
replaced Chester Towers	1971	Demolished	300	Senior
Chatham Senior Village	2000		40	Senior
Total public housing units			818	

The demographics of CHA, compared to Chester as a whole, is shown in Table 6 below. The racial composition of public housing residents reflects its segregated beginnings; it remains almost exclusively black. The City of Chester, however, has changed; from 1960-1990, the black population increased by 26% and the white population decreased by 69%. Because of the segregated nature of the city itself, the racial composition of public housing residents is

virtually the same as the census tracts in which they are located. Although the median household income of public housing residents is less than half that of the population of Chester, the city’s median household income is about half that of the country’s population.

Table 6. Demographics of Chester and CHA Residents, 2014

	Chester	CHA Public Housing Properties
Total Population	33,972	1,601
% elderly (>62)	13	16
% white only	17	4
% black only	75	95
% Hispanic (any race)	9	3
# Housing units	13,745	818
Median household income	\$27,249	\$11,737
% persons below poverty level	33	81

The Policy

CHA added the trespass policy (Appendix B), along with a policy requiring Housing Authority IDs, to its revised lease as of January 1, 2009. An introductory statement notes that “Recognizing the seriousness of drug activity as well as other criminal activity, including loitering, vandalism, curfew and weapons violations, the Authority adopts the following policy in an effort to enhance the safety, health, and well-being of its residents and its property.” The following table lists the specific offenses and the duration of the ban:

Table 7. CHA Trespass Policy Offenses and Duration

Offense	Duration of Ban
Property damage in excess of \$300	Two Years
Criminal activity involving the use or threatened use of a weapon or instrument	Five Years
Drug-related criminal activity on or off the property Eviction from CHA property (One-Strike Policy) Criminal activity that threatens the health, safety and right to peaceful enjoyment Verbal or physical confrontation with CHA residents, employees, agents, or law enforcement officers Violence or threat of violence against CHA residents, employees, agents, or law enforcement officers	Five Years
Manufacture or production of methamphetamine on premises Sex Offense subject to registration	Lifetime

Security and Police. In 2001, with funds from HUD’s Public Housing Drug Elimination Program (PHDEP), CHA developed its own police force with full arrest powers. This dedicated funding disappeared when HUD eliminated the program a year later. CHA supports the force through its capital fund, but continued federal budget cuts have meant that the initial force of 16 officers has dwindled to four. The Chester Housing Police maintains a 24/7 police dispatch center, and attempts to maintain 24-hour coverage on all properties, but recently the midnight shift has been cut. The primary policing strategy is one of “clearing corners.” As stated in annual reports, the goal is “to make CHA properties an unwelcome place to conduct illegal business. This is accomplished by continually moving unwanted persons and not permitting

them to congregate at or near CHA property. This takes targets away from criminals intent on shooting rival gang members and lessens the possibility of Residents being struck by stray bullets. It also helps minimize property damage.”¹⁸⁶ In 2010 and 2011, CHA applied for supplemental funds to increase the capacity of its CHA police force, without success.

Because of the severe shortage of police resources, CHA has chosen not to enforce its trespass policy, although it remains a part of the CHA lease. No one has been banned under the policy. This case study explores why the housing authority has reconsidered the trespass and ban approach, and the impact of alternatives on resident safety and quality of life.

Site Visit

For this case study, I conducted three site visits to Chester in April 2015 and interviewed Fischer, CHA’s executive director, three members of his executive staff (legal, project management, and housing vouchers/community relations), and the Chief of Police. The members of this core group have all been with CHA more than 10 years. I conducted a focus group of five residents at the CHA main offices. They were a convenience sample of residents who live in different developments and have a wide range of experiences in Chester public housing. Two had grown up in Lamokin Village, one had lived in the Chester Towers, one was a tenant leader at the Ruth L. Bennett Homes, one was a tenant leader at the Edgemont Senior Apartments, and one lives in the William Penn Homes. All residents were black. I toured all CHA properties with Fischer, who pointed out different features as we walked and drove around.

¹⁸⁶ Chester Housing Authority. *Annual Report 2010-2011*. 2014. Retrieved from http://chesterha.2ss.net/wp-content/uploads/2014/03/CHA_AnnualReport2010.pdf

Observational Data. The housing authority's main offices are on a block-long campus flanked by three four-story senior buildings, all built on the site of Chester Towers. The new campus is delineated by an open, black wrought iron fence, with a large parking lot in the rear. It is in stark contrast to many of the crumbling buildings along the side streets, one of which Fischer called, "one of the worst streets in the United States," because of drug traffic and violence.



Figure 13. CHA main offices and senior building (left) on former site of Chester Towers

As we drove past the William Penn Homes, one of the original developments, we saw a group of five young men standing on one of the corners in the development. No signs or fences indicated delineated space or trespassing. When I asked about trespassing signs, Fischer said:

I don't go for that. It's just, that's not the signal I want. I want better security to happen because people make it happen, not because of a sign that tells them. And those signs would tend to just be marked up and, you know, graffitied, and become, that becomes a whole extra battle, you know, you're fighting.

Fischer pointed to the men on the corner. “That’s the problem right there. Those guys. Any time now one of our cars will drive by and move them along, but it’s a constant process of doing that. But if you go back a few years, you know, they’re on every corner. Now they kind of move around.”

We drove through Wellington Ridge, the site of the old McCaffrey Village. The site includes 110 townhome units and a three-story building for seniors. It also has some 26 units of home ownership, which differ from the rental units only in the larger back yards. Fischer said,

You know the worse a place looks, I think the more of a signal it is that you know anything goes here so just come on and set up shop. So in this neighborhood, the home ownership and the rentals kind of blended so you can hardly tell the difference, but like this row of villas to your right, these are home ownership. So you have, not only do you have people renting affordable housing, you also have some people that are building equity in the same community, and that’s a healthy mix.



Figure 14. Wellington Ridge on former site of McCaffrey Village [CHA stock]

The new development sits on a much smaller footprint than the previous one, and Fischer said that the remainder of the site was left vacant in the hopes of developing a shopping center.

It remains vacant, as Fischer explains:

Now in order for that to have worked, a supermarket needed to have come as its anchor tenant, and we could never get a supermarket to come to Chester. So Chester still remains a city without a decent supermarket. So, you know, after ten years plus of trying or looking at other strategies, so, it probably won't become a shopping center, but it would have been a perfect site for it. It's flat. Nontoxic. And it's right by an entrance and exit to I-95.

We stopped at Chatham Estates, the site of the old Lamokin Village. The area is a community of 22 townhouse-style buildings on multiple blocks, with a combination of homeownership, rental, and voucher units. The frontage of the units are similar; the only distinguishing feature of the owned units is that the backs have garages. When I remarked that the cream and gray townhomes with back yards didn't look like public housing, Fischer said, "That's good." He pointed out a large building, the Booker T. Washington Community Center, named for a long-abandoned elementary school that sat vacant until the Hope VI-funded development. He pointed out a marker from the school that adorns the building and told the story.

"Actually, the marker is something I'm kind of proud of because the developer of all this, when I told him, "You'd better not damage that thing when you take down the school," said, "Why? What are you going to do with it?" I said, "I'm going to put it up in front of the community center." He said, "Don't do that. It's just going to be a target of graffiti and, you know, it's just going to make the community look bad." And I said, "Watch. I think I know, I think I know what the community has become better than you." So they saved it, and look, five years later...it looks good. And I don't sit out there every night guarding it.

We drove through the Ruth Bennett Homes, the other remaining development from the 1940's. Long rows of brick buildings surround a large garden at the back end, which after seven

years, has become a working farm of more than an acre. Now called Bennett Community Farm, the garden's success has also spurred adjacent community development – the grassy area surrounding the farm, unused for many years, is now Bennett Park and contains a pavilion and a greenhouse. The Farm has educational programs, a weekly farmer's market, a workshare program, and internships for high school and college students. We drove past another group of young men on a corner on their cell phones. Fischer noted that Bennett is a difficult place to maintain and police.

Interview/focus group data. I report here on the themes that emerged from the conversations, especially relating to my research aims around perceptions of safety, crime control, and quality of life. Because the trespass and ban policy is not being enforced, these themes center on alternative approaches that residents and staff emphasized. Similarly, visitor access and fairness of the trespass policy are not at issue, but the problem of crime conducted by non-residents remains. I report on themes relating to existing and proposed alternatives for controlling crime by visitors, and the fairness of these alternatives. I illustrate those themes and approaches with direct quotes.

Perceptions of safety. Safety has long been a primary concern for CHA residents. A survey¹⁸⁷ conducted by the CHA's Healthy Living Initiative in 2012-2013 gathered information on topics such as health status, fitness activity, and safety. Of 300 residents approached for one-on-one interviews, 200 responded. The survey asked residents if they felt safe in their homes, in their buildings and grounds, or and in their neighborhoods. Overall, 75% indicated that they felt

¹⁸⁷ Chester Housing Authority. *With Every Heartbeat There Is Life: Community Report*, 2013. Retrieved from: <http://chesterha.2ss.net/wp-content/uploads/2014/03/Chester-WEHL-community-report.pdf>

safe in their homes, 56% felt safe in their buildings or grounds, and only about one-third felt safe in their neighborhood. There were some site-specific differences, with residents feeling less safe in the Ruth Bennett and William Penn Homes.

My interview data add depth and nuance to the survey findings. The interviewees' responses varied based on whether safety was considered in relative or absolute terms. One staff member noted that residents often "come from much more unsafe situations." One resident said he felt safer than he had when he first moved in, before the buildings were redeveloped. In general, the senior developments were considered much safer than the family developments. But others pointed out that it was hard, if not impossible, to feel safe, given the widespread gun violence in Chester.

In my area, it's a high rate of gunfire violence. So in my development and in my surrounding development, we all feel the same. Your property is getting shot up. You know? It's enough so ... so you can't sit on the porch. Innocent people have been shot sitting out in their yards and in the streets.

And another resident:

The problem is, this area here, it's real because it's thick. Congregating in the area, and I feel that as citizens we need more protection because the bullets fly ... I remember a couple years ago the bullets fly in the second floor window, when I lived, in the window. And security is very important, you know, for our peace of mind.

I asked housing authority staff, with offices in the old Chester Towers site, if they felt safe coming to work. They did, but one commented that there was difference between working and living in the area:

The residents are here 24 hours a day. This is their reality. We're here 10-12 hours, then we're gone. This is everyday living. So, no, they don't feel safe.

They feel safer in Ruth Bennett because it's made of brick than at William Penn, with siding, because the bullets can get through.

In relative terms, residents felt safer because the CHA has its own police force, although they were aware that the number of officers had been cut back. Although some faulted the police for lack of communication with residents, most felt they were better off having the Housing Police than relying solely on the city police.

Crime Control. Among the staff, the major practical objection to the trespass policy was that it was an inefficient use of scarce police resources, tying officers up in administrative tasks rather than policing. Chief O'Neill explained that he did not have the manpower to enforce the policy:

Every time you arrest someone, take someone off the street, you're looking at hours at least of processing, report writing, whatever. That takes us off the street to continually police. So, you know, we're a tiny police force. You do as much as you can and you know if the police weren't there doing what they're doing, the problem would be compounded that much more.

Chief O'Neill also doubted that trespassing arrests would "stick." The officer would have to appear before a judge, he said, who would likely dismiss the charges, given a caseload of more serious crimes. The hearing would take the officer off the street even longer, and as in most arrests for nonviolent crimes, "like they say, arrest by 10, back by dinner." He believes that the present strategy of clearing corners is more effective than the trespass policy would be:

We can obtain better results by simply moving groups. Officers keep groups moving, and that lessens the likelihood of drive-by shootings at the home. Flying bullets jeopardize our children. We need to keep the kids safe.

Both staff and residents advocated the use of cameras to extend the reach of the police and as a crime prevention strategy. Although the new developments have

cameras, William Penn and Ruth Bennett do not. CHA staff reported that they were unsuccessful in applying to HUD for funding for 30 cameras, despite the need. One resident stated:

My personal opinion is that the police department is not enough. I think they can use help, like all police departments. They should have cameras. Cameras could see and cameras don't go to sleep. Cameras don't have favoritism. They don't lie. You know? They see everything so ...cameras changes people's attitudes and their behaviors.

Residents said that the City of Chester had installed cameras at Widener University, and expressed resentment over the perceived racial bias in allocation of resources:

They got cameras over by Widener but they should have put the cameras in the high drug areas. The city put it in. So now they're protected. And don't, don't take this the wrong way. They're the high and the whitey, and the mighty, and I don't mean this in disrespect.

But that, they're protected that interest when there are, here, William Penn. Will Penn is known for being a shoot-up area. Bennett Home where I live is known to be. Chatham occasionally. Not as bad, but it happens.

Another theme that emerged was that controlling crime in the developments would take greater community involvement. The residents themselves were the most vocal advocates for the need to "step up" in their own security:

And when you start talking about safety and safety in numbers or safety in this and safety in that, it's only as safe as the police department, as our first line of defense. That's what they say. But the first line of defense is the residents themselves. And they have to take more responsibility. Now I'm an advocate for them, and I will fight for any resident that's there. But a police department, whether it's the city or housing, the FBI, CIA, or whatever it is, is only as good as the people who report the incidents. And when you have incidents that are happening and people say "I don't want to get involved..."

I also think the residents need to become more aware what they can do to help. You know? It's just not a one-sided thing. Seeing problems. Seeing issues.

Knowing people doing things that they shouldn't do. Allowing it to happen and then saying, "Oh, that's a shame." I mean, you live here. Step up. In order for you to have peace and harmony where you live ...

Chief O'Neill echoed these sentiments:

A community really has to take into their hands their own security because you know the police just can't be everywhere every second. You know the saying, "When seconds count, the police are only minutes away."

One resident gave an example of a community-led program that could be effective in reducing crime and taking the neighborhood back from drug dealers:

You have to be willing to sacrifice or take that necessary step to say, "Hey, look. I don't want this in my area. In my area where I live at." We've gotten to the point that every three or four days during the summer, we sit outside on our steps. I started this program. Not a night out. A day out. A complete day that we can sit out. And when we do that, we find that they drift other places.

Visitor access. Not surprisingly, the residents were unaware of the trespass policy (although it is part of every lease). They did not express concern that a trespass policy could interfere with having visitors or could be applied unfairly. They thought it would be analogous to enforcing the city's curfew for those under 18, (9:30 p.m. Sunday through Thursday, and 11:00 p.m. on Friday and Saturday), to "keep people off the streets." There was widespread support for the curfew.

In general, the residents linked the trespass policy with the One-Strike provision and supported enforcing the policy in cases of drug-dealing visitors and relatives:

You say you're going to do something, do it. You know? The consequence to pay if your son is running drugs and in and out of your house, they don't pay the consequences. That's my opinion. You know? We have rules. One strike, you're out. Word gets out. They're not playing with you. You're not. The women are, "Hey, you're not getting me thrown out of here."

Another resident expressed skepticism that the policy, alone, would be effective if the residents themselves were not willing to take a stand against allowing “Joe Blow” or “their nephew” to come and sell drugs.

Well, the problem is then our residents. Yeah. You bust them at your property but they're not on the lease. Especially at the William Penn. But they're invited, you know, they're tolerated by certain residents. Not you, of course, but you know who they are. That's one, that's one of the factors that no matter how many times you get, it's not going to work.

Most people have a fear. Okay. Granted. But how much fear sleeping on the cold street? When your little kids say, “Mommy, I'm cold.” But you let your cousin come in there and sell drugs, bag up the drugs, leave a gun around.

Quality of life. Fischer commented that the quality of the product the housing authority offers, and the amenities it provides, is critical to engaging the community in its own security. He believes that reduced crime at the family developments that replaced Lamokin Village and McCaffery Village (Wellington Ridge and Chatham Estates) followed naturally from the brick-and-mortar improvements:

No one really gives the credit, but you know we've trained the community, and the community has trained itself not to be as tolerant of that. That's really where security has to emanate from. Not how many police you have, but who lives in it, and not being willing to tolerate it.

Using stimulus money, we converted four units in Bennett into a child care center. We brought something to the community, could be proud of it. We made child care easier. So this big old, worst project of the Housing Authority is kind of like in business. And, again, stuff like that contributes to security in the community because people have things that they want to protect and take pride in.

A recurrent theme throughout the interviews was investing in health and human capital as the longer-term strategy for improving the quality of life of public housing residents. Fischer calls this “co-stewardship” in which the CHA partners with residents to provide educational

opportunities and health and wellness programs. To launch these programs, the CHA obtained permission from HUD to use unspent HOPE VI funds that had been earmarked for attracting a for-profit supermarket to Chester. Instead, the CHA developed resident-led wellness initiatives that focuses on exercise and nutrition. This strategy allows CHA to tap into new funding streams (for example, National Institutes of Health for its Wellness Initiative, The Reinvestment Fund and Urban Tree for its community garden) to address the severe resource limitations that all housing authorities face, as well as the specific resource limitations in Chester. A CHA staff member commented:

Look, you've got failing, failed, marginal institutions around here...the worst sectors are education and the city police. The Housing Authority picks up for them. There would be a 100% change if we had more resources.

Fischer draws a direct link between these programs and achieving lasting improvements in security for public housing residents, because they foster personal empowerment and self-esteem:

You mentioned education, exercise. Nobody does more than we do in that area, and you would see packed rooms of people exercising and I think that goes a way towards security and education because you have people paying more attention to their own bodies. And that makes them think about what's going on in the rest of their life and how destructive it is and why don't they have a better outlook about that, just like they're now doing by getting in better shape?

Residents also pointed to CHA programming as key to developing safer communities by building and rebuilding skills in the community. They mentioned that residents run monthly meeting groups for mothers and fathers, and weekly sessions in the Anume (A New Me) program focused on exercise and nutrition. One resident said:

And, see, we are all people that came up in the projects, who have lived in the projects, who have, one way or another, whether it was health, financial, or what it was, was taken from us and because of living here, we have built ourselves back up.

Crime Statistics. I obtained crime data from Pennsylvania’s Uniform Crime Reporting System and graphed Chester’s UCR Part I crimes for the period 2005-2014, as well as the subset of Part I violent crimes. Chester has the highest crime rate in Pennsylvania and one of the highest rates in the country for a city its size. Except for a rise in 2011, the number of Chester’s overall Part I crimes have fallen each year, with a 24% decrease over 10 years. But this decrease is almost entirely explained by decreases in serious crimes against property, not persons. The number of *violent* crimes has barely changed at all, although there is a slightly downward trend since 2011. Nevertheless, the graph below illustrates the serious and entrenched violence Chester residents face. Chester has a violent crime rate of 21.5 per 1,000 residents (national median is 3.8) and a property crime rate of 35 per 1,000 residents (national median is 27.3)

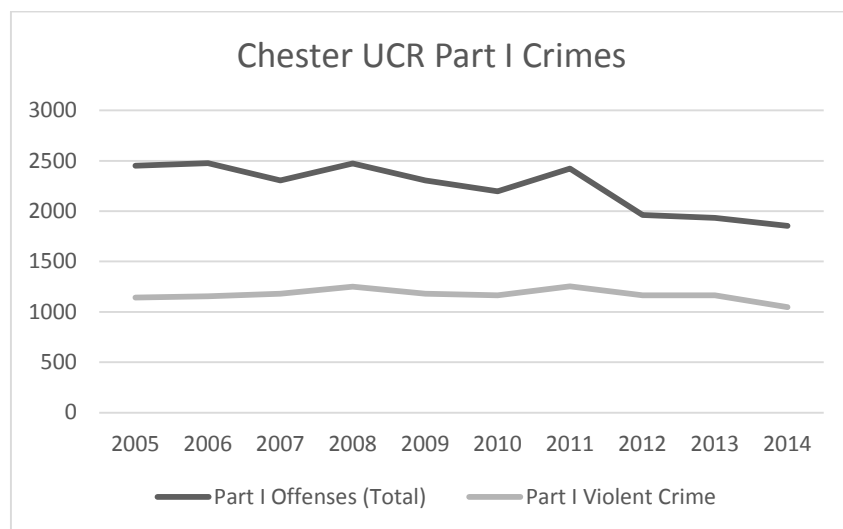


Figure 15. Chester UCR Part I Crimes, 2005-2014

To understand the level of crime on public housing property, I used two sources: CHA police monthly logs for FY 2011 and FY 2013, and the complete set of Investigative reports for 2014 (n=478). The monthly logs count the number of police activities in certain categories, such as calls for service, arrests, warrants served, investigative reports written, and people cleared from corners each month (an activity that does not generate a separate report). The investigative reports fully document all reported incidents, with names, locations, and narratives.

Data from the activity log appear in Table 8. The police fielded more calls for service in FY 2013 than in FY 2011, but filed fewer incident reports.

Table 8. CHA Police Activity Log, 2011 and 2013

	FY 2011	FY 2013
Cleared persons	27,272	9,603
Incident Reports	622	430
Arrests (total)	37	19
- Drug arrests	- 14	- 13
# Shots Fired (reported)	121	101
Lease violations referrals to management	84	35
Warrants Served	21	14
Citations Written	26	15
Calls for Service	15,021	17,176

The log confirms that the primary strategy for preventing crime is clearing unwanted people away from CHA property. In FY 2011, 27,272 people were cleared away, with predictable

declines in the winter months. In FY 2013, the number decreased to 9,603, with no significant decline in the winter (Figure 16). It is likely that the decrease in this activity is related to a cut in police manpower in FY 2013, rather than an actual decrease in the amount of people loitering on CHA property. Nevertheless, the scale of the activity even at reduced levels suggests how difficult it would be to enforce a trespass and ban policy. If even a fraction of the people cleared would be eligible for a ban list, it would far exceed the present capacity of the police force to maintain and enforce.

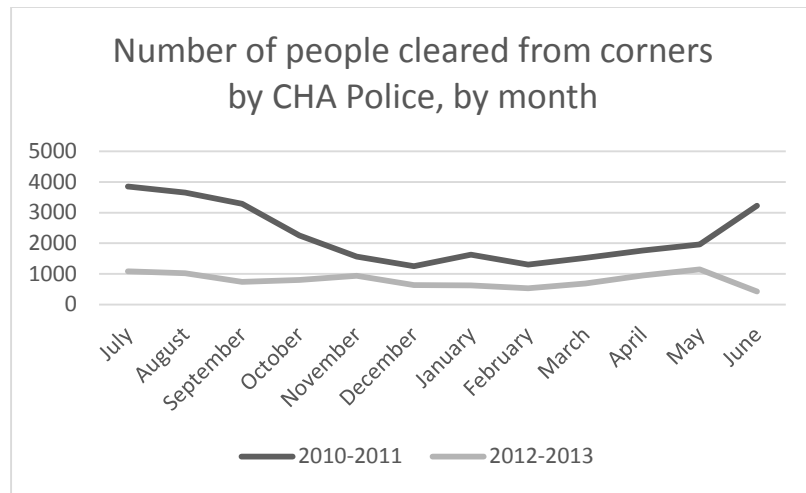


Figure 16. People Cleared from Corners by CHA Police, FY 2011 and FY 2013

To better understand the nature and location of criminal activity on CHA property, I reviewed each investigative (incident) report filed in 2014. Of the 478 reports, 86 (18%) were from the senior developments of Gateway, Edgemont, and Madison. By far, the majority of these incidents were not crimes; they related to physical or mental disabilities, or complaints about neighbors (e.g. noise). The Ruth Bennett Homes accounted for the largest single share of incidents (22%), followed by Chatham Estates (16%) and William Penn Homes (9%). The

majority of these incidents were complaints about domestic conflicts that did not rise to the level of violence.

The investigative reports do not provide UCR categories of Part I violent and property crimes. To estimate the incidence of violent crimes from these reports, I counted all documented homicides, rapes, and robberies, and added all reported interpersonal injuries as assaults. Given the overall level of violence in Chester, and the fact that CHA property is located in high-crime areas of Chester, the number of violent crimes reported on CHA property is surprisingly low. Of the 30 murders in Chester in 2014, just one occurred on CHA property. I estimated that 60 incidents could be considered Part I crimes, and that 40 of them could be categorized as violent crimes.

Conclusions

Chester has chosen to not to enforce its no-trespass policy, because the leadership (including its Police Chief) believes it would be an inefficient use of police resources and ineffective in reducing crime. Instead, it pursues a policing strategy of “clearing corners,” keeping groups from congregating on CHA properties. It pairs this strategy with an extensive program of “co-stewardship” with its residents, through health and other quality-of-life initiatives designed to empower and build community.

Residents differ on their perceptions of safety, based on whether they consider it in absolute or relative terms. Given the high rate of violent crime in Chester, it is impossible for public housing residents to feel “safe,” and yet they feel safer than in properties prior to redevelopment and safer in their developments than in the surrounding neighborhood.

A recurrent theme was the need for the community to be involved in its own safety, whether that be in reporting crimes to the police or in not allowing visitors or relatives to commit crimes on CHA property. Residents want security measures such as cameras and sense that their concerns are not considered on par with the concerns of Widener University and other predominantly white areas.

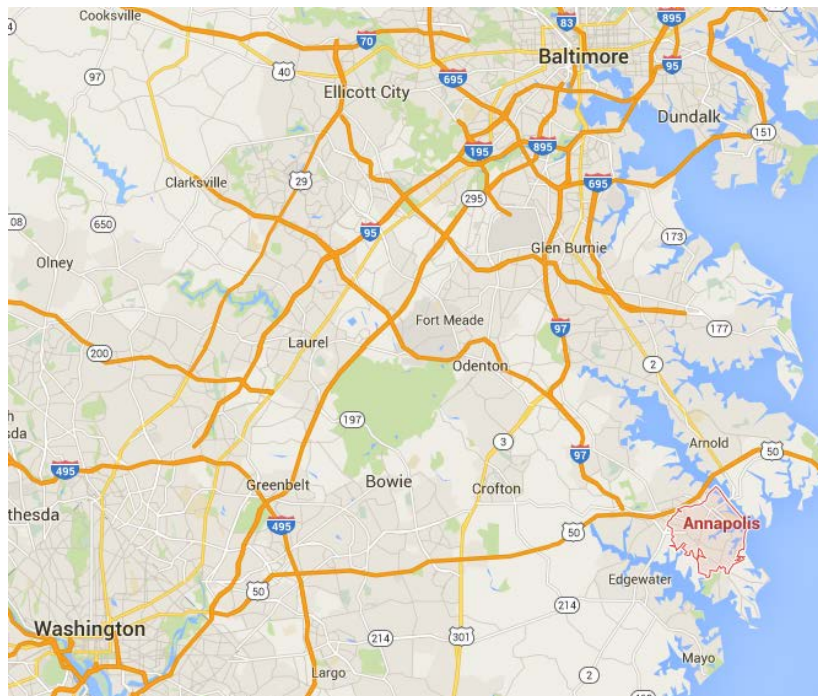
In a city with failed and failing institutions, markets, and educational systems, the housing authority has taken on the role of neighborhood change agent, in an attempt to change the underlying forces that contribute to the high rate of crime in Chester. In that role, it provides health and social services to its residents as well as other programs that benefit the community, such as an urban farm and daycare. Given this community role, there seems to be little room for a trespass and ban policy that would try to make housing authority properties a safe haven from the neighborhoods that surround them.

Chapter 7. CASE STUDY: ANNAPOLIS, MD

Annapolis is the capital of Maryland, the seat of Anne Arundel County, the home of the U.S. Naval Academy, and the site of a contentious battle over its housing authority's trespass and ban policy.

Settled in 1649, Annapolis lies on the Chesapeake Bay, about 35 miles south of Baltimore and about 35 miles east of Washington, D.C. It covers a land area of just over seven square

miles, with 17 miles of waterfront. It has a 2010 population of 38,394. It has a rich heritage as a seaport and as a cultural center. Landed gentry built grand 18th century homes that still stand today. Its waterfront is



its main attraction, drawing four million visitors each year. It is a wealthy city, with a median household income of nearly \$75,000 in 2014 (compared to the U.S. median income of \$51,939). In its midst lies some of the oldest public housing in the country. Annapolis is, as former Housing Authority of the City of Annapolis (HACA) Executive Director Vince Leggett says, “A Tale of Two Cities”: one part a predominantly white, wealthy city with colonial charm and yacht

racess; the other, a predominantly black, poor, city with deteriorating housing and high levels of drug crime. Table 9 describes the demographics of Annapolis and its housing authority.

Table 9. Demographics of Annapolis and HACA Residents, 2014

	Annapolis	HACA Public Housing Properties
Total Population	38,394	1,615
% elderly (>62)	13	12
% white only	60	5
% black only	26	93
% Hispanic (any race)	17	2
# Housing units	6,168	790
Median household income	\$72,462	\$14,936
% Persons below poverty level	11	72

These “two cities” sit adjacent to one another, uncomfortably, in one small municipality. Low-income neighborhoods and public housing are sometimes two blocks away from million-dollar homes; one small development (51-unit Bloomsbury Square, redeveloped in 2003) is in the downtown district. For the most part, the low-income neighborhoods are *de facto* segregated from the surrounding neighborhoods; they are separated by one-way and dead end streets, fences, trees, buildings and an absence of connecting roads. Larger neighborhood and civic organizations often draw their boundaries to end where public housing begins.¹⁸⁸

¹⁸⁸ Lambert, J., “State of disrepair: Solutions for Annapolis public housing.” December 4, 2014. Retrieved from <http://www.capitalgazette.com/news/annapolis/ph-ac-cn-housing-solutions-20141204-story.html>

HACA was chartered in 1937 and is one of the oldest housing authorities in the nation. In 1940, it built the first public housing in Maryland, College Creek Terrace (108 units), for blacks only. The new development was a big improvement over the dilapidated, overcrowded “Hoovervilles” available to blacks at the time.¹⁸⁹ Then came a whites- only Bloomsbury Square (84 units) in 1941, blacks-only Obery Court (60 units) in 1951, and whites-only Eastport Terrace (84 units) in 1953. Urban renewal brought more clearing of black neighborhoods, as Annapolis developed its historic district and downtown. HACA built or purchased more housing— Annapolis Gardens, built in in 1961, and the largest one, Harbour House (263 units), purchased in 1968. HACA properties became overwhelmingly occupied by black residents.

Drugs and crime ravaged Annapolis' public housing communities in the 1980s. To combat the problem, the mayor created a predominantly African-American police unit known as “Delta Force” in 1987. In the midst of a rash of violent drug crime, at one point in 1993, the governor deployed 30 state troopers to Newtowne 20 and a nearby apartment complex. HACA was also plagued by deferred maintenance and corruption, leading to the conviction of Annapolis Housing Authority director Arthur Strissel Jr., on fraud and bid-rigging charges in 1988.

HACA adopted its trespass and ban policy in 1994, after the Maryland State Legislature amended its trespass statute, which sets out different regimes for private property and for government buildings. The amendment specified that the provisions applicable to private property owners apply to housing authorities as well. The stated purpose was “to help public

¹⁸⁹ Jopling, H., *Life in the Black Community: Striving for Equal Citizenship in Annapolis, Maryland, from 1902 to 1952*. New York, N.Y.: Lexington Books, 2015.

housing authorities to keep drug dealers and other undesirable persons away from public housing projects.”¹⁹⁰

The original policy (Appendix C), in retrospect, is remarkable for the breadth of its scope and the absence of any recourse for the banned person. Anyone stopped or arrested by the police on or “near” housing authority property who might be considered “detrimental to the overall quality of life of public housing residents” could be banned for at least three years, and second offenses could lead to a lifetime ban. There was no exception for invited guests; instead, the resident was subject to eviction if seen on the property with the banned person. Banning was at the sole discretion of the Director of Community Safety. Banned people could write to the Director to request removal from the banned list, but no criteria were listed for the decision.

The policy was intermittently and unevenly enforced at the beginning, depending on the changing leadership of HACA and the police. But the ban list grew from 50 in 2000 to 300 to 2007 to 565 in 2009. I reviewed the 2009 list; although most people were banned for “CDS (Controlled Dangerous Substance), many were banned for “Nuisance” or “Trespass.” Many people banned in 2000 were still on the list. A number of residents reached out to the ACLU because they felt that their rights were being violated. After unsuccessful attempts to negotiate with HACA, the ACLU filed suit against HACA and the city of Annapolis on behalf of 13 residents and their relatives on common law, statutory, and constitutional grounds. A year later, the parties reached a settlement, which included damages for the residents and a new, more limited trespass policy. The revised policy (Appendix D) allows residents to designate their friends and family as “invited guests,” and residents no longer face threats of eviction for

¹⁹⁰ Johnson v. State, 356 Md. 498, 740 A.2d 615 (1999)

allowing their guests on the property. The policy has clear procedures for how people get off the banned list. In effect, HACA threw out the old banned list, and started again. Only 25 people on the original list remained on the new list. As of September 2015, the list had 53 names. Many minor offenses are not bannable, such as disorderly conduct, failure to obey police, loitering, littering or similar nuisance, and since 2014, possession of less than 10 grams of marijuana. The settlement indicates that the Housing Authority must consult with the ACLU before making changes to the new policy. The trespass and ban policy continues to divide Annapolis, as a new mayor has urged HACA and the police department to revisit and strengthen the new policy.¹⁹¹

Meanwhile, crime was not the only problem HACA faced, as maintenance and management issues led HUD to designate it a “troubled” authority in 2005. At that point, HACA had gone through five executive directors in four years. It remained on the “troubled list” until 2011. Vince Leggett joined HACA as executive director in 2010, and led a series of initiatives to rebuild or rehabilitate some of the oldest sites, often with private partners.

HACA now owns and manages 790 public housing units and 386 Housing Choice Vouchers (331 tenant-based, 53 project-based). It has 41 vacant units awaiting repair, and 1,270 people are on waiting lists that have been closed since 2012. HACA is shrinking, as it uses mixed financing to convert older developments into privately owned and managed properties. Newtowne 20 will be rebuilt next year with a private developer. Table 10 lists HACA’s current inventory:

¹⁹¹ Sauers, E., “Annapolis housing authority may revisit banning policy.” November 11, 2014. Retrieved from: <http://www.capitalgazette.com/news/annapolis/ph-ac-cn-city-council-1111-20141111-story.html>

Table 10. Present HACA properties

	Built	Status	Units	Type
<i>HACA developments</i>				
Newtowne 20	1971		78	Family
Robinwood	1970		150	Family
Harbour House	1953	Purchased 1968	273	Family
Eastport Terrace	1953		84	Family
Morris Blum Senior Apartments (formerly Glenwood High-Rise)	1976		154	Senior
Elsie V. Clark (formerly Bloomsbury Square)	1941	Rebuilt 2003	51	Family
<i>Privately Managed Properties</i>				
Obery Court/ College Creek Terrace	1952/ 1940	Redeveloped 2009	103 174	Family
Annapolis Gardens/ Bowman Court	1961 1974	Redeveloped 2010	150	Senior
<i>Total public housing units</i>			790	

The Policy

Bannable offenses and duration of the ban in HACA’s revised policy are listed in Table 11.

Table 11. HACA Trespass Policy Offenses and Duration

Offense	Duration of Ban
Nonviolent criminal activity	One Year
Criminal activity using a deadly weapon, or threatening with a deadly weapon, on or within 300 feet of HACA property	Three Years
Drug-related criminal activity on or within 300 feet of HACA property	
Violent criminal activity on or within 300 feet of HACA property	
Manufacture or production of methamphetamine on premises	Lifetime

Sex Offense subject to registration	
-------------------------------------	--

Police and Security. The original policy got a boost in 2008 when HACA entered into a Memorandum of Understanding (MOU) with the Annapolis Police Department to allow officers to serve banning notices, in addition to their existing ability to arrest people for trespassing once banned. Prior to that, HACA had employed off-duty officers to serve the notices. As Chief Pristoop explained, the prior arrangement meant that the officers were under civilian supervision, and the newer arrangement allowed better police oversight of their activities. The MOU called for a \$100,000 payment from HACA to the police department. After the lawsuit, and with considerable shortfalls in the PHA budget, the amount of the payment to APD was reduced to \$36,000. No payment was made in the past year.

Site Visit

For this case study, I conducted three site visits to Annapolis and one to the offices of the ACLU in Baltimore in August-October 2015. I interviewed Vince Leggett, HACA's Executive Director at the time, and his Operations Chief, Regina Mitchell, who later became Acting Executive Director when Leggett resigned abruptly in September. I also interviewed the Chief of Police, Michael Pristoop, Deborah Jeon, the ACLU's Lead Counsel for the Annapolis case and Amy Cruice, her legal administrator who was the primary liaison to the residents in the lawsuit. Cruice arranged a visit with the lead plaintiff in the case, Esther Sharps, who still lives in Annapolis Gardens. With Sharps, I interviewed two of her grandsons who had been on the banned list and were part of the lawsuit as well. I also interviewed residents of Harbour House, Eastport, and Obery Court in their homes, because I was unable to arrange a time and place that

was convenient for all of them for a focus group. I identified these residents as leaders or former leaders in each development, and recruited them by phone. All residents were black, and each had more than 10 years of experience in multiple developments in HACA.

Observational Data. Harbour House and Eastport Terrace are adjacent to each other on a large, tree-lined campus with multiple street entrances. The Housing Authority's main offices sit behind the campus. Harbour House reflects both its origins as a middle-class development and a legacy of deferred maintenance. Its garden-style apartments, terraces, and an outdoor swimming pool are rare amenities for public housing, but some were in poor condition. A resident pointed out intercoms at each entrance that no longer worked, having been disconnected in an "upgrade" in the 1990s. There was water seeping from a laundry room, and another resident said that it had been reported to maintenance weeks before. At least two units were boarded up. The pool is surrounded by a fence and no-trespass signs. It appeared in good condition, but was not open during its posted hours. A resident said that the pool often opens late, closes early, and is closed on Sundays. Many people were milling around the parking lots and the grassy areas between buildings. I saw one police car on patrol, weaving in and out of the parking lots.



Figure 17. Harbour House, garden-style apartments

Eastport Terrace is more modest, barracks-style housing in poor condition. Boarded-up units face the street and give the impression of a development in disrepair.



Figure 18. Eastport Terrace, barracks-style apartments



Figure 19. Eastport Terrace, vacant unit

Harbour House and Eastport share a community center, which was not open when I visited in the middle of the day. A resident told me that this was a common occurrence. I saw only two small no-trespass signs—one at the pool, and one toward the top of the community center’s façade. The signage does not send a strong signal of delineated space or of an area covered by a no-trespass policy.

Interview data. I report here on the themes that emerged from the conversations, especially relating to my research aims around perceptions of safety, crime control, quality of life, visitor access, and fairness. This case study allowed me to include the perspectives of people involved in the lawsuit who had been banned or had their relatives banned. I report on themes emerging from those conversations because they add an important first-person account

of the way the policy was actually implemented and enforced, and its effect on families. I illustrate those themes and perspectives with direct quotes.

Perceptions of safety. Despite significant public attention to the trespass policy and security issues, residents said they felt safe in their homes and in their neighborhoods. In fact, they often pointed to other, private developments as having more crime and as places that “pizza people wouldn’t deliver to.” Some felt that public housing carried the stigma of crime, so that when a crime was committed in the area, it was reported as a crime on or near their development. Another area of agreement was that the crime in their neighborhoods was not being committed by residents, but by people coming from other places.

I think the majority of the people that I see or talk to over here, they feel very safe. I have people that don't live in the community come in. They wash their clothes. They don't... no one bothers them, bothers their clothes or nothing else. They come and they talk to as they go along their job up and down the street, the naval academy and all jobs daily. They go here, down this way, down through the woods, up across to get over and they go back around to the academy. Nobody bothers anyone. And there's a lot of times... it's dark when they even come through.

Another resident pointed to the trespass policy as an effective way of dealing with the non-residents committing crimes in the developments:

It's when the residents allow bad people to come into their communities and take over their communities. The people who don't live there. And the people who don't live there's the ones that cause the most problems. So the banning list is a good thing. I feel like it's a good thing. It gives the management office, the police department, the power to do what they have to do to make the residents safe.

A recurrent theme was the intersection of maintenance and safety. A resident of Harbour House pointed out that because the intercoms were broken, it was impossible to screen visitors or know when someone wanted to visit. Thus, outer doors were often propped open, making

the units within the development less secure. Regina Mitchell of HACA commented that residents' perception of safety was more a function of proper maintenance of the properties than of the crime statistics.

I think most people feel safe, as long as the housing authority has maintained the security. When I say the security, I mean the basics, that the doors are working, the windows are working, the locks on the windows and doors are working. Then that gives them the perception that they're safe inside that living unit. When they feel unsafe is when they feel that people can come into their unit, come into their houses unannounced, break in. That's when their perception of feeling unsafe is elevated.

When residents spoke of fear, it was a fear of eviction—a fear of a system that uses lease violations to enforce rules, both major and minor. Residents described being afraid to speak out, or make demands upon the housing authority. They spoke about people being afraid to complain, or to draw attention to themselves, or to be a part of the lawsuit. The need to protect one's apartment came up in almost every conversation:

...the people, they're afraid at times. 'Oh I'm not going to say nothing. They'll put me out.' I say, they cannot put you out for that. See I've talked countlessly on they cannot put you out. You can talk all you please, just like I would tell a lot of them.

...they're afraid. And not only are they afraid, there's so much corruption going on in the world today that you have to defend yourself. Even if it's put in writing – even if you go pay a bill, if you don't keep that receipt, and somebody calls you, "We didn't get your bill this month." "Well yes you did, because I have my receipt." "Because if you don't put protection on yourself, who will? With the Housing Authority changing hands and every time you turn around.

...so I am not even going to talk to them or get smart with them because all you gotta do is open your mouth and they're ready to lock you up. They can say what they want to say to you but you can't even open your mouth.

For its part, the housing authority sees lease enforcement as its best security policy, sending the word out to the community that, "the agency is no longer playing with crime." Its

job, Leggett maintains, is made harder by courts that do not uphold evictions and by legal aid that supports the evicted resident right, or wrong. Leggett explains:

That one-strike-and-you're-out policy. It was the most forceful act that had been statutorily given to agencies in a long time. Because most people if they realize that they're going to get in trouble ...And if they're now seeing that we're enforcing the lease on every level, it's going to deter them from those actions. And I think the biggest one is that being evicted, finding out that your neighbor's being evicted, not because of what your neighbor did, because of what their guests have committed...that sends a whole shockwave throughout the community to say, "Wait a minute. I can get evicted because of what my guests did..."

Legal aid should be our biggest partner in this fight, in enforcing our lease, and working with residents and getting them the services that they need to live successfully. Often times, they have become our adversary.

HACA's Mitchell explained her position that the courts are shortsighted when they refuse to uphold an eviction because public housing is often the housing of last resort. By doing so, the safety of the other residents, the vast majority of the community, is put at risk:

They don't want the kids, they don't want children homeless no matter what their parents or other family members have done or are doing, but it's about the children, and we're the last resort to have a roof over their head. But in the interim I always remind them that next door to that person you just put back there, who has violated the lease several times, could be your sister, your grandmother. And we can't just isolate that one family, but we have to think of it as a community and how it's impacting the community. And when the courts fail to do what they're supposed to do and to back our leases, it's hard.

Crime Control. Respondents disagreed about the effectiveness of the old trespass policy in controlling crime. Did the lawsuit dismantle an effective policing strategy, or did it curb the excesses of an ineffective policy? Respondents talked about the number of people on the ban list, and what happened when that number dropped dramatically after the lawsuit was settled.

Leggett said that most people outside the developments assume that the drop meant that more criminals now roam HACA properties:

I just think it's pure math. I mean, you've got 500. And let's say that if some percentage of them really were put on the banned list improperly. But the guy standing in the 7-11 or the supermarket is not going to feel that 85% of them was put on the list improperly so how did you get from 500 to 80? It just blows people's minds and just thinks something is very squirrely. It means more bad actors are on the property.

This is in contrast to Jeon and Cruice of the ACLU, who talked about how the large number of people on the original list, who were almost all black men, had the practical effect of allowing police to stop every young black man they saw. Cruice and one of Sharps' grandsons described going through a traffic checkpoint at Eastpoint Terrace, where police stopped each car and asked the driver for identification. With Cruice at the wheel, however, the car was waved through without checking her identification. Sharps' grandson said that the tactic did not catch any drug dealers, because they would be warned by someone ahead of time, and would just wait until the checkpoint was gone. Instead, it made the residents less willing to travel:

I thought that was so stupid. I mean, it wasn't like you was looking for a murderer or anything. I mean everybody come through they just stopped and looked at I guess who was all was in the car whatever...it was unnecessary. Like some of the older ladies who lived there were afraid to go anywhere, like they were afraid to go shopping because they didn't want to have to come back and...the just didn't want to have that, even though they lived there and they were just going out grocery shopping they didn't want to come back through again and have to like worry about what are they going to look for, what are they going to find. So some people felt like they couldn't even like, when that was happening they wouldn't, like they didn't want their families to come in, they didn't want to leave, they just felt afraid about this constantly. They didn't feel safe.

Beyond the serious constitutional issues raised in the lawsuit, Jeon also felt that, practically speaking, it was not likely that more than 500 dangerous criminals were freely roaming other parts of the city:

If you have 500 people and their names, you know, it takes this long to go through a list, then you can stop people and figure out who they are. You can stop everyone and figure out who they are...this was just a lot of people to consider. This number of people are so dangerous that they can't go into a neighborhood, and yet all of these people are in other places in our city.

But with a list of 25 people and the new list they have pictures. So that's not really cause to stop any young black male walking down the street, and think it's your job to make sure they have the right to be on the property. It changed it from chances are you might be on this list ...to there's 25 people, and you're clearly not one of those people.

Chief Pristoop, however, maintained that many of the people on the original ban list were criminals and that crime had spiked when the list was dissolved. Even people with lifetime bans were removed from the list, he said, and many were not put back onto the new list. He claimed that there was a “double digit” increase in the percentage of crime on or near housing property, involving either a victim or a suspect who had been on the on ban list.

It was in '11, '12, and '13 when I took a really close look at it because I wanted to see if there was an effect. If there was an immediate effect. Now the argument is, some of those 500 people shouldn't have been on the list that long. But there were a lot of people who should have still been on it. But when that policy was rewritten, the list was recreated, and there was dispensation. All the people that were on it ...were no longer on it, and you had to start from scratch again. I don't know how many people knew that, but it wasn't something I was a fan of.

One resident said that there had recently been a shooting at Eastport, but that it was a mistake to attribute any spike in crime to the change in the ban list. In fact, he thought that the

ban list would have no effect on such shootings, because they often involved “outsiders” settling grudges. He reported what he had heard about the shooting:

Somebody got killed over there from Baltimore, so now these guys be coming trying to kill the people. Yeah, they shoot in broad daylight, like one time one of the kids was in the swimming pool...well somebody coming to kill somebody is not going to be determined [sic] by a ban list. If you willing to kill somebody, what the risk of a trespassing charge?

Quality of Life. Respondents agreed that drugs were the biggest crime problem affecting quality of life in their communities, but disagreed on solutions. The police and housing authority focused on filtering out “bad guys” from public housing, while residents focused as services to young boys and men to provide alternatives to drug use and dealing, such as afterschool activities, sports, and jobs for first offenders. One resident identified a cyclical pattern for young men, who get into trouble for dealing drugs at an early age and then cannot find a way to support themselves others than to continue to deal drugs:

Some people don't have nowhere to go and they figure – because I've talked to a lot of guys around here that's been in trouble and I asked them why did they do what they do, and most of them tell me it's because they can't find a job. “Okay, why can't you find a job?” Because my record won't allow me to work. The background check, you done went to jail, you done did your time, and nobody will hire me because of my background. I haven't had it expunged, but looking for somebody to give me a second chance. What do I do?”

Having a relative on the ban list took a significant toll on residents' quality of life, because of its effect on family relationships. One of the Sharps grandsons could not pick up or drop off his three-year-old son from preschool because the program was on public housing property. At one point so many members of the Sharps family were banned from public housing that they could no longer celebrate holidays together:

I think some of those occasions where we wanted to have family here, Thanksgiving when people...I used to have family reunions, but after that I just stopped having them because it would have been bad to have it, what I have about 9 more grandkids. I just stopped having it because eight of them couldn't be here so I didn't have it anymore.

Cruice of the ACLU noted that the regime of rules and the threat of eviction made trespass and ban policy in public housing different from the gated community concept that Justice Ginsburg questioned:

These are people who live under a level of scrutiny and watch and control and requirements and all of this that most, if you don't live in public housing, you don't have to live under that.

It's not like a gated community. Right. The guards are watching the tenants. I mean, it's like there, the guards are looking to protect the tenants. But that wasn't what this was like.

Visitor Access. Another theme that arose was that the policy divided families and interfered with family ties that in most other situations would be seen as desirable and socially useful. Sharps had two sons and eight grandsons on the ban list; she relied on them for transportation to doctors' visits; they in turn had children living in HACA developments that they wanted to help raise. One of Sharps' grandsons continued to trespass to pick up his young son, and questioned why his criminal record should interfere with his family obligations:

After a while, I just didn't care. I was going to see my son, and they weren't going to stop me. I was dealing drugs, I had a record. But does that mean I can't see my grandmother? Why I had to pick her up down the block? I don't think there should be a policy at all, I mean, if you've done your time, then you're out, then it's double jeopardy. If I'm safe enough to be on the streets, then why I'm not safe enough to be in public housing? If you're so dangerous, then you should be arrested.

Cruice and Jeon of the ALCU said the policy's impact on families was particularly large for the men working the hardest to be good fathers.

And so what this means is that people are banned from, often from their neighborhood they grew up in, and the neighborhood that all their family lives. Really, kind of the most devastating part of this whole policy was what it meant for holidays for entire families and what it meant for dads. Like dads trying to raise their children or trying to have their parents relate. To me, that was that, you know, they say in this society we want dads to be more of a part of their kids.

But then we say, "But you can't go to anybody," you know, "Your kids' houses, you can't go." "Your mother's house, you can't go to." Most of our plaintiffs were banned, the men who were banned, they felt that they were trying to be good men and that this was making it harder, but it was kind of like even if you do good and you do all the right things, sometimes you can still be labeled a criminal.

Chief Pristoop questioned whether a no-trespass policy could work when a resident could simply invite a banned relative or guest onto the property. He noted that the new policy says nothing about emergency visits or requesting visits for a specific reason:

(The new policy) allows any bona fide resident to give dispensation blanketly to anyone who is already on a banning list. It's the invited guest rule here. "Upon receipt of information that a friend or relative has been banned under the banning policy, any HACA resident named as such, in good standing, under his or her lease, may designate that person as an invited guest for the purpose of that..."

So under "designation," it does not have any restrictions as to, well, 30 days as a guest or if that guest somehow is proved to be, you know, a continuing problem. No. Essentially, you can be banned for selling drugs on the property. And, by the way, I think even a lifetime ban person could get permission to be no longer banned by any resident. That's not banning. Right? Doesn't that vitiate the banning itself?

Residents, whether or not they supported the trespass and ban policy, were unanimous in wanting to make an exception to visit relatives and maintain family relationships:

...if my son can't come and see me – that tears me from my son and our communication. I'm not doing it; he's not doing it – he already did it because he got in trouble. But the love for my son doesn't change the housing authority because I live in housing authority and I've got to take these rules out on my son. And that draws the relationship between me and my son. And I've seen that happen to a lot of families, and that's not fair.

Fairness. The theme of fairness emerged from almost every interview, with the clear implication that a policy with a single arbiter cannot be fair. This came through in interviews with people personally and not personally affected by the trespass and ban policy In Annapolis, Anita Jackson of HACA had full discretion over the banning. One of Sharps' grandsons, banned for a drug arrest in which charges were dropped, described seeing Jackson in court:

Then the judge said you're dismissed and I went over to her and I said, See? The charges were dropped. Now can I get off the ban list? She just looked at me and said, "Not yet." And she would show up in court, and she would hear them dismiss the charges, and she wouldn't care. It was like Hotel California, really people did not come out. Like you got on it and even for minor, like these open carry, and there was no, there was no written process.

He recalled writing many letters requesting removal from the list and never receiving a response. At one point, a police officer offered to hand-deliver a letter to Jackson, and still there was no response. It took eight years to get off the banned list. He described how the trespass violation worked:

It was to the point that the first couple of times that they lock you up for trespassing they give you a fine. Then you kept getting locked up and then they start giving you 90 days in jail.

I mean I only got locked up one time for trespassing. But the guy who came out with the paper he seen me at a neighbor's and he recognized me. He came to me and asked me my name, I told him my name and they just locked me up. I had to pay a fine. The ticket said \$500 but when I went to court they suspended \$400. I only had to pay \$100 fine.

Chief Pristoop acknowledged that there were issues of fairness in the old policy, but thought they could have been addressed without undermining the policy itself:

It's fair to say that there was a problem with the procedural fairness of the old policy. Then I think the intention could and should have been, from the ACLU and the advocates or the people that wanted change, "Yeah, we need better procedural process here." But what happened, again, with that, was a weaker banning policy in its enforceability. I think you can have it both ways. You can have a fair policy, but an effective policy.

The theme of fairness arose not only in terms of how the housing authority implemented the trespass policy, but also in how the police enforced the policy. That enforcement took place against a backdrop of longstanding policing strategies that targeted young black men, according to a number of residents. Referring to Freddie Gray, the man in Baltimore who died in police custody, Sharps said, "You know like they have it up in Baltimore is really bad... they trying to stop that."

Sharps and her grandsons related a number of recent incidents in which police approached or stopped them for no apparent reason.

You can be just standing up there with a bunch of boys and just because they are coming and you put your hands up like they always make you do and there's only a couple of them and then they take everybody. Why he taking me I ain't got nothing. You're standing there with them, you know.

Yea, I was just, me and my friend just sitting there talking. Oh, they'll do that, they'll walk up to you if you sitting over there. They come to me on bikes and they asked me for my ID. I showed it to them and they ran it in to see if I had any warrants or charges or anything.

So I saw the police lights so they pulled me over in the car and I waited. But they just sat there and then shut the lights off and moved on. They just like waited to see if I ran.

The police knocked one of our friends off the bike and he was on life support. He got hurt real bad. Oh yea, and seeing they are not supposed to chase them.

Mitchell felt that recent deaths of young black men in Ferguson, Missouri and in Baltimore had “changed the nature of the debate” and would make it much more difficult to enforce a trespass policy now than it had been, and that the “culture of policing” was changing in response to those incidents.

It’s impacting on how the local police agencies are policing our property. I had a conversation with another local police department and that was one of the things he said. He said that these cases, in this past year, 18 months have impacted greatly on how they’re policing, especially low income public housing properties.

Crime Data. I reviewed UCR Part I offense data for Annapolis, and obtained police data on Part I offenses on, and within 500 yards of, HACA property in 2012-2014. HACA data prior to that were unavailable. The direct result of the change in policy was that trespass arrests in public housing dropped from more than 300 in 2008 (by newspaper accounts) to an average of 32 in 2012-2014. As shown in Figure 20, the Annapolis data reveal significant drops in both property and violent crime in the past ten years. Violent crime decreased from 515 in 2006 to 176 in 2011. Property crime decreased from 1,958 to 1,034 in the same period. The reductions in violent crimes coincided with greater enforcement of the trespass and ban policy, but the trend has continued after the policy was amended and the ban list restarted. This suggests that the policy was not the primary cause of the drop in violent crime, or that there was some sort of carryover effect long after the more stringent policy was abandoned.

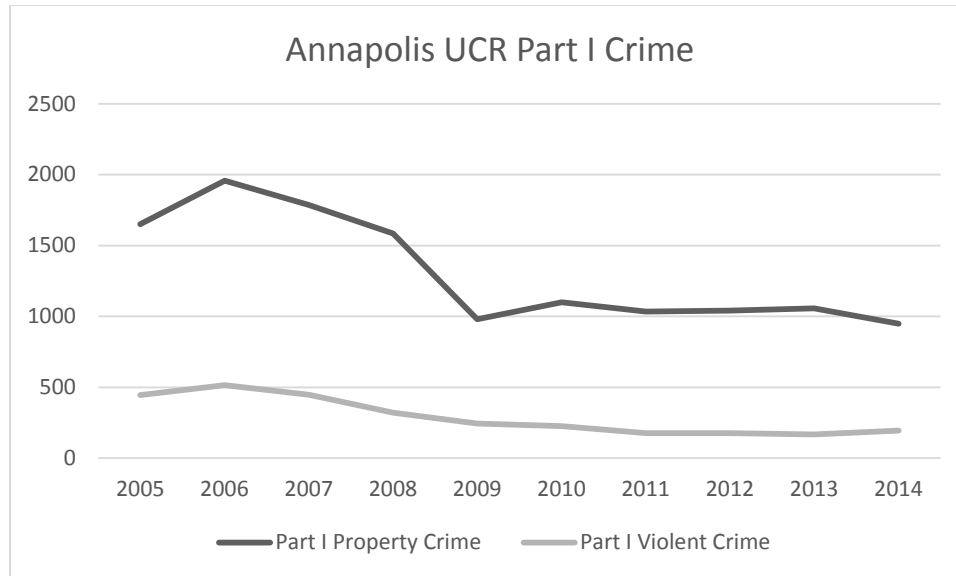


Figure 20. Annapolis UCR Part I Annual Crime, 2005-2014

The more recent data on the location of crimes indicate that HACA and its vicinity account for about 15%-20% of violent crime in Annapolis each year. Note that this “vicinity,” as categorized by the police, includes a radius of 500 yards from HACA property; the new trespass policy (Appendix D) specifies bannable offenses within 300 *feet*. Even with this large radius, the proportion of crime on or around HACA property is stable; the recent (slight) uptick in crime in the city is not explained by crime in HACA and its vicinity.

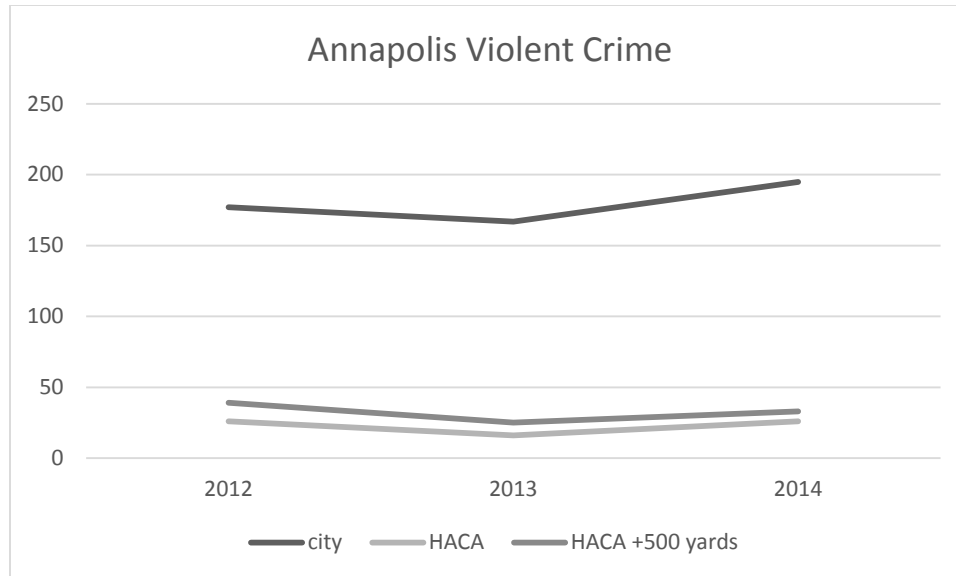


Figure 21. Annapolis Violent Crime, City, HACA, and Vicinity, 2012-2014

Conclusions

Annapolis continues to struggle over the appropriate scope and enforcement of its no-trespass policy, despite the fact that the residents themselves do not express much fear of crime. They do express a general fear of eviction, of running afoul of housing authority rules and regulations. This is not surprising, given that the housing authority considers lease enforcement, and the threat of eviction, as its most powerful security measure. This context explains how the combination of the one-strike policy and the original trespass policy produced an atmosphere that intimidated many residents.

The original policy was widely considered unfair because banning was left to the sole discretion of a housing authority official. Interviews with people directly affected by the ban reveal that the policy divided families, and interfered with residents' rights to visitors. It seemed

to discourage the types of family and parental bonds that, in almost any other situation, are considered socially useful and personally rewarding.

There is significant disagreement among housing authority staff, police, and residents about the effectiveness of the original policy, and the utility of the new one. The nature of the 500+ people on the old list was of much debate. The police and housing authority felt that many serious criminals were on the list, and that the policy should have been amended slightly to provide more procedural fairness. Many residents, and certainly the ones personally affected by the ban, felt that most of the 500 people were not criminals at all, or they were ones who had served time and did not deserve to be banned. The ACLU felt that the policy was a pretext for extra-legal stops of young black men.

The recent events involving the death of young black men in police custody in Ferguson and Baltimore loomed large in some of the interviews, as men described being stopped and questioned by police for little reason. These findings in Annapolis demonstrate that a no-trespass policy builds upon a legacy of overpolicing of minority communities and runs the risk of exacerbating existing racial injustice.

Although the police perceive that crime went up after the original policy was changed, the objective crime data do not support that contention. Still, there remains a belief among city officials and popular press that crime is rampant on housing authority property, and that the no-trespass policy needs to be strengthened. Housing authority properties may carry the stigma of high crime, as perceived by “Main Street” but not felt by the residents themselves.

Chapter 8. COMPARATIVE ANALYSIS OF THE THREE CASE STUDIES

In this chapter, I present comparative data across sites, compare and contrast my findings, and analyze the use of no-trespass policy within a framework that balances resident, visitor, and security concerns.

The demographics and crime rates for each city in Table 12. The historic waterfront cities of Chester and Annapolis are virtually the same in terms of population size, but have little else in common. The “tale of two cities” that HACA’s Vince Leggett described within Annapolis can also be told when comparing Annapolis and Chester: one, predominantly white and wealthy, the other, predominantly black and poor. Yonkers, a much larger city, has a median household income much more in line with the national one of about \$52,000 than the other two sites. Despite the difference in size, Yonkers and Annapolis have about the same rate of violent crime, a rate more in line with the national median of 3.8 than Chester, which has one of the highest rates in the nation.

Table 12. Demographic comparison among case cities

	Yonkers	Chester	Annapolis
Population (2010)	195,979	33,972	38,394
% white (only)	56	17	60
% black (only)	19	75	26
% Hispanic (any race)	35	9	17
Median household income	\$59,195	\$27,249	\$72,462
% persons in poverty	16	33	11
% persons in public housing	2	5	4
Violent crime rate (per 1,000 residents)	5.3	21.5	5.4

This data snapshot of each city helps us to understand the role and activities of each PHA. The significant poverty in Chester is a signal of a weak housing market, while the significant wealth in Annapolis signals a strong one. In Chester, a city with few municipal resources, the PHA has become the biggest (and best) landlord, having had access to the funds necessary to rebuild its properties. In Annapolis, the PHA is an enclave, truly providing last-resort housing (either by public housing or through vouchers) in an area with little other affordable housing. In Yonkers, a municipality eager to redevelop and invigorate its southwest waterfront neighborhoods, the PHA has pursued a strategy that will turn more of its units into mixed income developments.

From my site visits, I found that PHAs differ in a number of ways that help explain how each PHA has handled security in general and no-trespass policies in particular. Not surprisingly, each PHA focused its security measures on the developments with the largest number of units, where

residents (and crime) were concentrated. But no-trespass policies were not limited to the stereotypical high-rise projects; both Annapolis and Chester's most populous developments are garden apartments and rowhouses. However, the smaller footprint of the high-rises in Yonkers made implementation of a no-trespass policy easier. Other important features include:

PHA management and staff. Chester and Yonkers have benefitted from strong, stable leadership. Because of conditions of "de facto demolition," CHA operated under receivership for 20 years, with direct supervision by Robert Rosenberg for 10 years and steady leadership by Fischer for the last 10. Yonkers had stable leadership all along: before Shuldiner, Peter Smith ran MHACY for 33 years. Shuldiner, a former HUD official, brought a national reputation and experience in New York, Chicago, and Los Angeles to bear in running MHACY for the past decade. The staff in Yonkers and Chester reflect this stability, as many of them have worked together as a core group for more than 10 years. In contrast, Annapolis continues to have turnover at all management levels. It has had three executive directors in 10 years (Leggett and three high-level staff abruptly resigned in 2015).

Relationship with tenants. The Chester and Yonkers PHAs seem to have collaborative working relationships with their tenants. Chester has put particular emphasis on health and educational initiatives for its residents; Yonkers also provides a variety of programs that go beyond housing, such as computer and job training. Annapolis has a difficult and confrontational relationship with its tenants (ironically, it refers to tenants as "stewards" in its newsletter); the housing authority, by its own account as well as its residents', is feared for its power to evict. In

contrast, MHACY's Shuldiner once characterized evictions as a "failures", saying, "We're in the business to house people, not to evict them."¹⁹²

Physical condition of properties. Stark differences exist in the quality and maintenance of PHA housing. HUD inspects and scores each property managed by the PHA every one to three years, and issues a composite score with a high of 100 and a passing grade of 60. The latest scores are consistent with my observations of each site. Not surprisingly, all redeveloped properties in the sites had passing scores, most often in the 90s. The original developments in Chester and Yonkers had passing scores as well, but the largest ones in Annapolis had failing scores (Harbour House, Robinwood, and Newtowne 20).¹⁹³

Policing. Chester is unusual for a PHA in that it has its own police force, with full arrest powers granted from the state. Yonkers employs a private security firm at its guard booths and for patrols at the smaller developments; until last year, the Yonkers police department had a dedicated housing unit that used community policing strategies. Annapolis contracted with the Annapolis police department to implement its trespass policy (at the height of banning, it sent \$100,000 a year to the APD), but the MOU expired and the APD no longer provides specialized services to the housing authority.

These data and characteristics help us understand the development of no-trespass policies in each site. In Yonkers, a combination of strong management, well-maintained properties, and

¹⁹² Garcia, E., "Drug evictions from Yonkers' public housing fell in 2007." February 7, 2008. Retrieved from <http://www.lohud.com/>

¹⁹³ Physical Inspection Scores. Retrieved from http://www.huduser.gov/portal/datasets/pis/public_housing_physical_inspection_scores.xlsx

adequate policing resources produced a no-trespass policy characterized as fair, well-targeted, and unobtrusive.

In Chester, a combination of strong management, a collaborative relationship with tenants, well-maintained and new properties, and inadequate police resources led to a decision not to enforce a no-trespass policy. In its stead, Chester housing police continue to “clear corners,” an activity supported by the residents, and to invest in human capital programs, as a longer-term, more effective strategy.

In Annapolis, a combination of weak and unstable management, a confrontational relationship with residents, poorly maintained properties, and considerable resources devoted to policing by both HACA and the wealthy municipality, led to a no-trespass policy that was broad in scope and indiscriminately applied. It lacked basic due process protections and divided families who faced the very real threat of eviction for trying to maintain healthy relationships. It raised serious constitutional concerns, as the ACLU lawsuit described. The new policy is far more limited and has protections for invited guest, but is perceived as ineffective. It continues to be a divisive issue among HACA residents, other residents of Annapolis, police, and politicians.

Each of the housing authorities in these case studies chose a different role for its no-trespass policy. These decisions are a function not only of the particular characteristics of each site, but also of the way each one tries to balance interests that sometimes conflict, and may compete for resources. As discussed in Chapter 2, these interests include:

- the legitimate needs and concerns of tenants in promoting and sustaining family relationships;

- the legitimate needs and concerns of visitors in promoting and sustaining family relationships with tenants;
- the legitimate security concerns of tenants and management.

To fulfill their missions of providing safe, decent, and affordable housing, housing authorities must strike the proper balance among these interests. Pro-family tenant interests are inherent in common law doctrines of quiet enjoyment and visitation, and explicit in HUD policies and regulations requiring reasonable accommodation of tenants' guests. In *Moore v. City of East Cleveland*,¹⁹⁴ Supreme Court Justice Lewis Powell Jr. explained the central importance of the family in our society: "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." The Richmond Tenants Organization expressed these interests poignantly in its amicus brief declaring tenants' rights to live a "normal" life.¹⁹⁵

Pro-family visitor interests overlap with those of tenants, although the PHA's contractual commitments are to the tenants, rather than to the visitors. Given that many parents do not live with their young children, and many adult children do not live with their parents and grandparents, pro-family policies must necessarily include supporting visitation on PHA property. As I discussed in Chapter 4, visitor interests also invoke constitutional doctrines of due process, freedom of association and assembly and speech, equal protection, and unreasonable search and seizure.

¹⁹⁴ *Moore v. City of East Cleveland*, 431 U.S. 494 (1977)

¹⁹⁵ 2002 U.S. Briefs 371; 2003 U.S. S. Ct. Briefs LEXIS 444

Security concerns must also be addressed, both in themselves and because of their impact on tenant and visitor interests. PHA management is required to provide safe housing and safe grounds; as a landlord, it must support residents' quiet enjoyment of the unit and premises by limiting people and activities that would interfere with that fundamental assurance. HUD Secretary Julian Castro recently announced grants to 29 PHAs for "emergency" safety systems such as cameras and fencing and said, "All Americans should feel secure when they're at home...These grants provide our local partners with new tools to enhance the strength and vitality of their neighborhoods. Now, more families will be able to walk to school, get to work and safely access opportunity."¹⁹⁶

A healthy, vibrant community rests on an appropriate balance among these interests, which sometimes overlap and sometimes conflict. Here I situate no-trespass policies within this broader framework, and consider how each housing authority handled this balance in the adoption and implementation of its specific no-trespass policy.

In Yonkers, prior to the policy, residents said some of the developments were so dangerous that even the police didn't want to go there. The security concerns were severe, and many residents were afraid to go outside. In that situation, families needed a safe haven from the surrounding violence, and MHACY implemented a package of security measures including fences, guards, and cameras. The measures delineated a safe space, but it also restricted access to the property, potentially conflicting with pro-family policies towards tenants and their

¹⁹⁶ U.S. Department of Housing and Urban Development. "HUD awards \$6 million to 29 public housing authorities to support emergency, safety, and security needs." [Press Release]. May 18, 2015. Retrieved from http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-058

visitors. The challenge in Yonkers was to keep out serious criminals, and keep rival gangs separate, while still assuring ready access to tenants and reasonable accommodations for their guests. MHACY did this by implementing a system of electronic key fobs, which allowed tenants to bypass guard booths, and by simple sign-in processes at the guard booths for visitors. It also recognized that even people on the no-trespass list had legitimate connections with tenants that deserved support, and thus implemented procedures for making some exceptions for family visits.

The limited scope of MHACY's no-trespass policy helped maintain this balance. There were usually fewer than 100 people on the ban list at any one time, because the policy was well-targeted ("people are on the list for a reason") and because the length of time on the list was commensurate with the crime. The size of the list limited the impact on most of the tenants' relationships. In addition, it allowed the guards and the dedicated police unit to readily identify people on the list, thereby reducing the need to stop tenants and their visitors.

This is in sharp contrast to the way Annapolis implemented its original no-trespass policy. There, security concerns took precedence over other pro-family interests, although these concerns seemed more pressing to HACA management and the municipality than to the tenants themselves. There is no question that drug and violent crime was much higher in the neighborhoods that contained public housing and Section 8 housing than in other areas of Annapolis; however, there is little evidence that drug crime was higher on public housing property than in the private developments in the same area. Indiscriminate application of the policy led to a ban list that exceeded 500 people in 2009, ostensibly to protect a public housing population (at the time) of about 3,000 people. As written and as applied, the original policy

interfered with associational rights of both tenants and visitors. The practical effects were to ban people from the areas in which they were raised, and to divide families, often impeding activities that are otherwise encouraged, such as parental involvement with children.

To enforce a ban of this magnitude and scope, police stopped many black men to ascertain whether they “were on the list.” Stops of this sort, including traffic checkpoints, likely violate state and U.S. Constitutional protections against unreasonable searches and seizure. That the vast majority of people on the list were young black men certainly raises issues of equal protection and racial stereotyping. The imbalance between tenant and visitor rights and management security concerns led to the ACLU lawsuit, and the settlement produced a revised no-trespass policy that rebalanced these interests. Whether the new policy reflects the proper balance is now the subject of great debate in Annapolis.

The new policy allows tenants to designate people on the ban list as their guests, thereby allowing visitation. Its limited scope does not encourage random or systematic police stops. As the Anne Arundel County State’s Attorney Anne Colt Leitess said, “Simply crossing onto the land of the housing authority does not equal a crime.”¹⁹⁷ However, the police chief claims that the guest policy “vitiates” the ban; HACA’s Mitchell notes that the housing authority should not privilege one family’s interests against the other tenants’ interests in security. But my interviews with residents did not reveal widespread safety concerns on public housing property, and when concerns were raised, residents spoke more often of maintenance problems. Addressing

¹⁹⁷ Lambert, J., “Residents, neighbors vexed by uptick in violent crime on public housing property.” December 2, 2014. Retrieved from <http://www.capitalgazette.com/news/annapolis/ph-ac-cn-housing-day-3-main-safety-20141202-story.html>

maintenance issues does not put pro-family policies in conflict with one another, but does require resources that HACA does not have.

The connection between security and maintenance was clear in Chester, where public housing had fallen into such disrepair that HUD inspectors were afraid to enter the properties. First-person accounts in court records indicate that drug crime had basically taken over some of the developments, and that HUD and the PHA were not meeting minimum standards of providing decent and safe housing. In such an extreme case, the interests of tenants, visitors, and the housing authority (under judicial supervision) coalesced into a bricks and mortar strategy to make the housing habitable. Under the receivership, through Hope VI and other grants, the physical condition of the properties improved dramatically, although crime remains high in certain developments (but no higher than the rest of Chester).

The CHA's current approach to security comes from a recognition of the extent of drug and gun violence in Chester, and a belief that it cannot police its way to creating a safe space for its families. In a city with "failed and failing" institutions, the CHA has focused explicitly on supporting families through health and social programs such as fitness classes, nutrition workshops, and parenting groups. This strategy also attempts to address needs in the larger community through activities such as an urban farm and a daycare center. In contrast to the other sites, the CHA's focus is not on identifying individual "bad actors" and restricting their access to public housing property; instead, it seeks to align the interests of tenants, visitors, and management in a long-term security strategy. Through human capital programs for its tenants, and programs that provide essential services to the larger community, the CHA hopes to build the community's capacity to police itself.

On balance, the no-trespass policy in Chester does not serve these interests and the overall strategy, and the CHA chose not to enforce it. Its policing strategy of clearing corners of groups is not likely to interfere with individuals visiting family members, but it is also not likely to have a lasting impact on violent crime because of its temporary nature. The use of surveillance cameras is supported by both tenants and management, but the CHA has not been able to procure the funding to install them in the properties that have not been redeveloped.

It is important to recognize that the CHA's overall security strategy may be as much a function of severe resource limitations as it is a judgment that a no-trespass policy would be ineffective, or that it does not balance competing interests properly. The policy remains part of the lease, as an addendum signed by every resident. Because of the absolute high levels of crime, residents said that they would support enforcement of a no-trespass policy, and had few concerns about whether it would be implemented fairly. It could be that the CHA's ongoing investments in health and educational programs, and the community's involvement, has fostered a confidence such a policy could be effective. This could also reflect the generally positive interactions residents have with the Chester housing police. I had the impression, however, that CHA management had little enthusiasm for enforcing a no-trespass policy even if additional policing resources became available.

Chapter 9. CONCLUSIONS AND RECOMMENDATIONS

This research provides insight into how no-trespass policies are implemented in a variety of public housing authorities and how they are perceived by the people they directly affect: the residents, their visitors, housing management, and police.

My findings suggest that a no-trespass policy, narrowly targeted and as part of a larger security strategy, can promote perceptions of safety among public housing residents. With strong due process protections and clear procedures for assuring that tenants' rights to have visitors are not violated, it can pass constitutional muster. Whether it is an effective, or cost-effective, form of crime control, however, is very much in debate.

Implemented in isolation, a no-trespass policy is not likely to be effective in reducing crime and promoting perceptions of safety, and runs the risk of being used to police residents, rather than to protect them. If the policy is not narrowly tailored, it can divide families unnecessarily and discourage familial ties that create stability in a community.

The Yonkers case study exemplifies a successful implementation of a no-trespass policy paired with other security measures that delineate safe space. Residents perceive it as fair, and it has built-in processes and procedures to assure fairness. Police consider it a valuable tool, in that it increases the cost to criminals of doing business on PHA property. At best, it may prevent some violent crime by providing a "safe haven" between rival gangs; the delineated space may be the equivalent of a demilitarized zone in high drug crime areas where gang violence is rampant.

The Annapolis case study illustrates the risks, and disutility, of an overbroad implementation of a no-trespass policy. People were banned at the sole discretion of a housing authority official, with little recourse to appeal and no defined way off the list; banned people were fined and jailed for trying to visit their relatives on PHA property. Residents faced eviction for exercising their rights to have visitors. The Annapolis experience shows that no-trespass policies can be blunt weapons against crime that cast very wide nets over a community, arbitrarily restrict movement, and interfere with family relationships. Applied arbitrarily and targeted indiscriminately, these policies are not likely to be deemed constitutional.

Further, my findings from Chester suggest that no-trespass policies may not be the most effective way of achieving long-term security for public housing residents. They take valuable and scarce police resources to maintain; the Chester Housing Authority decided that it would not be an efficient use of those resources. Larger cities and wealthier small towns may be more likely to have police forces that can maintain such policies, if the police have agreements that allow them to be agents of the PHA. But the larger question is one of alternative uses for PHA resources. Although a minimum level of security is necessary before a community can act, longer-term safety may lie in the development of human and social capital, and on the provision of social supports and services, rather than on banning criminals from PHA property.

.Strengths. This is the first study to look systematically and comparatively at the adoption and implementation of no-trespass policies in public housing. It considers objective and subjective measures of crime and safety, and draws out multiple voices that have a stake in these policies and in the quality of life in public housing. It describes the historical, demographic,

organizational, and legal context for adopting these policies, and analyzes how these policies balance the legitimate and sometimes conflicting interests of residents, visitors, and security.

Limitations. The biggest limitation of this research is the lack of longitudinal, address-level crime data for each site, which would enable a quantitative assessment of the changes associated with a no-trespass policy. A potential weakness of my qualitative data is that the residents were not chosen at random, and in some cases, were recruited with the housing authority's help. Another limitation is that my sites, because they agreed to participate in the research, may not reflect the experiences of PHAs that did not, or could not, participate because of organizational upheaval or legal issues around trespass policy (for example, Richmond, Virginia, and New York City). However, I was fortunate to be able to begin my research in Annapolis before the HACA leadership resigned, and so one of my cases, I believe, reflects a site that would not now be able or willing to participate in research like this. As in all case study research, my sites are not necessarily representative of the larger population of PHAs, but they do reflect the large- and mid-size urban housing authorities most likely to implement no-trespass policies.

Implications. My findings have implications for HUD and federal policymakers, individual PHAs considering (or reconsidering) a no-trespass policy, and for planners interested issues of trespass and zoning strategies beyond public housing.

For individual PHAs, my findings suggest that a no-trespass policy be considered only as part of a larger set of security measures. PHAs without strong and stable leadership, well-maintained properties, and collaborative relationships with residents will not likely be able to implement a policy effectively. If a PHA decided to implement a policy, it should have a slow

rollout, with multiple meetings among residents to get feedback and gain buy-in; a committee process for deciding to ban, and a separate process for hearing appeals; a simple mechanism for assuring that residents may invite a banned relative (and be responsible for the relative's actions), and clear standards for getting off the ban list.

For HUD officials, these findings are helpful in understanding how PHAs are implementing no-trespass policies and how these actions affect the core mission of providing safe, decent, and affordable housing. Because a no-trespass policy can conflict with other, pro-family interests that HUD supports, officials might consider requiring PHAs to report relevant data on their Annual Plan. These data should include longitudinal crime rates, by development, and lists of banned people, with offenses committed and dates of banning and expiration. Such a reporting requirement would serve two purposes: first, it would allow HUD to monitor PHAs to ensure that the policy was tailored to the crime situation and enforced reasonably, and second, it would provide a rich source of quantitative data to evaluate the effectiveness of the policy in reducing crime.

For planners, my findings have implications for the larger issues of trespass and zoning strategies in parks, downtowns, and business districts. Although banning from public property brings up a different set of issues than banning from private property, it is worth considering whether municipalities offer any of the protections or safeguards inherent in well-run PHAs with good tenant relationships. Are they creating a "safe haven," from violent crime, as in Yonkers, or are they creating criminals, or longer criminal records (with trespassing violations) among people exercising associational rights, as in Annapolis? Municipalities should ask themselves

who they are protecting from whom, and whether their purposes would be better served by providing services and support, as in Chester.

Planners can, and should, play a role in these decisions. The principles and processes of participatory planning would allow multiple stakeholder voices to be heard—including proponents of these policies, social service agencies, police, and the potentially unwanted “targets,” who are often minority, poor, and disenfranchised. Planners can help assure that trespass and ban policies are not considered in isolation, but as one of a number of alternative strategies that can achieve the goals of safe and vibrant public spaces. An inclusive process will make it more likely that a no-trespass policy, if adopted, is narrowly targeted, fair, and paired with other supports for marginalized populations.

Next Steps. Future research will focus on obtaining longitudinal, address-level data on crime rates to evaluate the effectiveness of no-trespass policies in reducing crime in public housing. I am also interested in detailed analysis of large ban lists, including race, gender, age, and specific offense, to categorize who is being banned and why. Further qualitative work might include using ethnographic methods to understand how a no-trespass policy affects the daily lives of residents and their visitors.

BIBLIOGRAPHY

- American Prosecutors Research Institute (1994). *Community prosecution: a guide for prosecutors*. Alexandria, VA: American Prosecutors Research Institute.
- Barbrey, J. (2004). Measuring the effectiveness of crime control policies in Knoxville's public housing: Using mapping software to filter Part I crime data. *Journal of Contemporary Criminal Justice*, 20(1), 6-32.
- Beck, G.A. (2004). Ban lists: Can public housing authorities have unwanted visitors arrested? *U. Illinois Law Review*, 5, 1223-60.
- Beckett, K., & Herbert, S. (2008). Dealing with disorder: Social control in the post-industrial city. *Theoretical Criminology*, 12(1), 5-30.
- Beckett, K., & Herbert, S. (2010). *Banished: The new social control in urban America (Studies in crime and public policy)*. Oxford, England: Oxford University Press.
- Beckett, K., & Herbert, S. (2010). Penal boundaries: Banishment and the expansion of punishment. *Law & Social Inquiry*, 35(1), 1-38.
- Belkin, L. (1999). *Show me a hero*. New York, NY: Little, Brown & Co.
- Bend Chamber of Commerce (2015). Expanding the civil exclusion zone. Retrieved from <http://bendchamber.org/uncategorized/expanding-the-civil-exclusion-zone/>
- Bennett, L., Smith, J., & Wright, P. (2006). *Where are poor people to live? Transforming public housing communities*. Armonk, NY: M.E. Sharpe.
- Bloom, N., Umbach, G., Vale, L., & Heathcott, J. (Eds.). (2015). *Public housing myths*. Ithaca, NY: Cornell University Press.
- Blumgart, J. (2014, October 20). The housing crisis we don't talk about. Retrieved from <https://nextcity.org/features/view/the-opposite-of-gentrifications>
- Blumgart, J. (2015, August 31). Yonkers affordable housing fight isn't over. Retrieved from http://www.slate.com/articles/business/metropolis/2015/08/show_me_a_hero_finale_an_interview_with_yonkers_housing_authority_chief.html
- Bratt, R.G. (2010, October 17). The road to PETRA. Retrieved from http://www.shelterforce.org/article/2015/the_road_to_petra/
- Buckley C. (2010, January 26). Lawsuit takes aim at trespassing arrests in New York public housing. Retrieved from <http://www.nytimes.com/>
- Carlis, A. (2006). The illegality of vertical patrols. *Columbia Law Review* 109, 2002-09.

- Castro, J. (2015, April 7). Our national affordable housing crisis. Retrieved from <http://www.cnn.com/2015/04/07/opinions/castro-affordable-housing-crisis/>
- Chester Housing Authority. (2013). *With Every Heartbeat There Is Life: Community Report*. Retrieved from: <http://chesterha.2ss.net/wp-content/uploads/2014/03/Chester-WEHL-community-report.pdf>
- Chester Housing Authority. (2014). *Annual Report 2010-2011*. Retrieved from http://chesterha.2ss.net/wp-content/uploads/2014/03/CHA_AnnualReport2010.pdf
- Cisneros, H., & Engdahl, L. (2009). *From despair to hope: HOPE VI and the new promise of public housing in America's cities*. Washington, DC: Brookings Institution Press.
- City Of Yonkers. (2007, December 20) Mayor Amicone tours new & improving Schlobohm housing [Press Release]. Retrieved from <https://www.highbeam.com/doc/1P3-1402519921.html>
- Cohen, R.M. (2014). The RAD-ical shifts to public housing. Retrieved from <http://prospect.org/>
- Council of Large Public Housing Authorities (2000, March 9). CLPHA takes aim at HUD report on gun violence in public housing. Retrieved from www.clpha.org
- de Souza Briggs, X., Darden, J.T., & Aidala, A. (1999). In the wake of desegregation. *Journal of the American Planning Association*, 65(1), 27-49.
- Debucquoy-Dodley, D., Almasy, S. (2015, February 12). Akai Gurley case: NYPD officer charged with manslaughter, other counts. Retrieved from <http://www.cnn.com/2015/02/11/us/new-york-gurley-shooting/>
- Duncan, G.J., & Zuberi, A. (2006). Mobility lessons from Gautreaux and Moving to Opportunity. *Northwestern Journal of Law and Social Policy*, 1, 110-26.
- Ellickson, R. (1996). Controlling chronic misconduct in city spaces: Of panhandlers, skid rows, and public-space zoning. *The Yale Law Journal*, 105, 1165-248.
- Eugene Police Department (2010, August 17). Downtown public safety zone activity report. Retrieved from http://www.eugene-or.gov/portal/server.pt/gateway/PTARGS_0_2_360267_0_0_18/DPSZ%20Review_08-18-10FINAL.pdf
- Flanagan, P.M. (2003). Trespass-zoning: Ensuring neighborhoods a safer future by excluding those with a criminal past. *Notre Dame Law Review*, 79, 328–9.
- Friedman, L.M. (1966). Public housing and the poor: An overview. *California Law Review*, 54(2), 642-69.
- Garcia, E. (2008, February 7). Drug evictions from Yonkers' public housing fell in 2007. Retrieved from <http://www.lohud.com/>
- Garnett, N.S. (2005). Relocating disorder. *Virginia Law Review*, 9, 1075-134.

Gibbs, A. (2003). *Focus Groups*. Department of Sociology, University of Surrey. Retrieved from: http://isites.harvard.edu/fs/docs/icb.topic549691.files/Focus_Groups.pdf

Goldstein, E. (2003). Kept out: Responding to public housing no-trespass policies. *Harvard Civil Rights-Civil Liberties Journal Review*, 38, 215-45.

Graham, D.A. (2015, October 15). A no-go area for those arrested? Retrieved from <http://www.theatlantic.com/>

Greenhouse, L. (2003, June 17). First Amendment argument is made in trespass case. Retrieved from <http://www.nytimes.com/>

Hannaford, R. (2003). Trading due process rights for shelter: Rucker and unconstitutional conditions in public housing leases. *University of Pennsylvania Journal of Constitutional Law*, 6, 139-62.

Harris, T., (2010). Settlement challenges Seattle police banishment practice. Retrieved from <http://realchangenews.org/2010/10/27/settlement-challenges-seattle-police-banishment-practice>.

Henderson, A.S. (1995). 'Tarred with the exceptional image': Public housing and popular discourse, 1950-1990. *American Studies*, 31-52.

Hexter, K.W., Hill, E.W., Mikelbank, B.A., Clark, B.Y., & Post, C. (2011). *Revitalizing distressed older suburbs*. Washington, DC: Urban Institute.

Hill, G. (2004). Use of pre-existing exclusionary zones as probationary conditions for prostitution offenses: A call for the sincere application of heightened scrutiny. *Seattle University Law Review*, 28, 173.

Holzman, H.R., Hyatt, R.A., & Kudrick, T.R. (2005). Measuring crime in and around public housing using GIS. *Geographic Information Systems and Crime Analysis*, 311-29.

Housing and Development Law Institute. (2004). Model Limited Access and Barring Policy. Retrieved from at: <http://www.hdli.org>

Hunt, D. (2005). Was the 1937 U.S. Housing Act a pyrrhic victory? *Journal of Planning History*, 4(3), 195-221.

Huron, A., Brown, M., Carolini, G., Dahmann, N., Featherstone, D., Fraser, J., . . . Slater, T. (2010, summer). The end of public housing. Retrieved from http://www.shelterforce.org/article/2024/the_end_of_public_housing/.

Jopling, H. (2015). *Life in a black community: Striving for equal citizenship in Annapolis, Maryland, 1902-1952*. Boston, MA: Lexington Books.

Kaplan, W.J., & Rossman, D. (2011). Called out at home: The one strike eviction policy and juvenile court. 3 Duke Forum for Law & Social Change. 3,109-38.

- Kopp, J. (2013, November 13). Chester Housing Authority employee gives final report." Retrieved from <http://www.delcotimes.com/article/DC/20131114/NEWS/131119672>
- Krueger, R.A., Casey, M.A. (2000). *Focus groups: A practical guide for applied research*. Thousand Oaks, CA: Sage Publications.
- Lambert, J., (2014, December 2). Residents, neighbors vexed by uptick in violent crime on public housing property. Retrieved from <http://www.capitalgazette.com/news/annapolis/ph-ac-cn-housing-day-3-main-safety-20141202-story.html>
- Lambert, J., (2014, December 4). State of disrepair: Solutions for Annapolis public housing. Retrieved from <http://www.capitalgazette.com/news/annapolis/ph-ac-cn-housing-solutions-20141204-story.html>
- Lazarus, D.G. (2004). Here comes the neighborhood--Virginia v. Hicks and how the New York Legislature should empower law enforcement with more powerful trespass-barment statutes as a tool to combat crime in public housing projects. *Seton Hall Legislative Journal*, 29, 315-27
- Legal Aid Society. (2015). Davis settlement. Retrieved from <http://www.legal-aid.org/en/criminal/criminalpractice/davissettlement.aspx>
- Legal Defense Fund. (2010, January 29). Case: Davis v. City of New York. Retrieved from <http://www.naacpldf.org/case/davis-vs-city-new-york>
- Logan, W.A. (2007). Constitutional collectivism and ex-offender residence exclusion zones. *Iowa Law Review*, 92, 1.
- McCarty, M. (2014). *Introduction to public housing*. Washington, DC: Congressional Research Service (Report No.R41654).
- McLarnon, J.M. (2000). Pie in the sky vs. meat and potatoes: The case of sun ship's yard no. 4. *J Am Studies* 34:67–88.
- McClure, K. (2011, February 28). Reduction of worst case housing needs by assisted housing. Available at SSRN. <http://dx.doi.org/10.2139/ssrn.1914423>
- McCreless, P., (2014, September 3). Anniston Housing Authority to issue ID cards to residents. Retrieved from http://www.annistonstar.com/news/anniston-housing-authority-to-issue-id-cards-to-residents/article_51e6b0ba-33cf-11e4-92c4-001a4bcf887a.html
- Mitchell, D. (2003). *The right to the city: Social justice and the fight for public space*. New York, NY: Guilford Press.
- Mitchell, D. (2005). Property rights, the First Amendment, and judicial anti-urbanism: The strange case of Virginia V. Hicks. *Urban Geography*, 26(7), 565-86.
- Mitchell, K. (2010). Pre-black futures. *Antipode*, 41(s1), 239-61.

- Moore, S., Davis, M. (2007, March 8). Black exclusion zones: Are drug-free zones targeting African Americans? Retrieved from <http://www.portlandmercury.com/portland/black-exclusion-zones/Content?oid=273589>
- Mueller, B., and Goodman, J.D. (2015, January 8). New York to settle suit on policing in public housing. Retrieved from <http://www.nytimes.com>
- Nelson, R.H. (2006). New community associations for established neighborhoods. *Review of Policy Research*, 23(6), 1123-41.
- Németh, J., & Schmidt, S. (2011). The privatization of public space: modeling and measuring publicness. *Environment And Planning B: Planning And Design*, 38(1), 5-23.
- Newman, O. (1973). *Defensible space: Crime prevention through urban design*. New York, NY: Collier Books.
- Newman, O. (1996). *Creating defensible space*. Washington, DC: U.S. Department of Housing and Urban Development, Office of Policy Development and Research.
- Owens, A. (2013). Perceptions of disorder, violence, and safety amid the transformation of assisted housing. *Cityscape*, 15, 78-103.
- Pattillo, M. (2007). *Black on the block*. Chicago, IL: University of Chicago Press.
- Physical Inspection Scores. (2014). Retrieved from http://www.huduser.gov/portal/datasets/pis/public_housing_physical_inspection_scores.xlsx
- Rimer, S. (1987, December 22). Yonkers anguish: Black and white in 2 worlds. Retrieved from <http://www.nytimes.com>
- Robinson, J.B., & Rengert, G.F. (2006). Illegal drug markets: The geographic perspective and crime propensity. *Western Criminology Review* 7, 20-32.
- Sampson, R., & Raudenbush, S. (2005). Neighborhood stigma and the perception of disorder. *Focus* 24, 7-11.
- Sauers, E. (2014, November 11). Annapolis housing authority may revisit banning policy. Retrieved from: <http://www.capitalgazette.com/news/annapolis/ph-ac-cn-city-council-1111-20141111-story.html>
- Scharff, R.L. (2005). An analysis of municipal drug and prostitution exclusion zones. *George Mason U. Civil Rights Law Journal*, 15, 321-40.
- Schwartz, A.F. (2010). *Housing policy in the United States*. New York, NY: Routledge.
- Seattle City Trespass Program FAQ, (2013). Retrieved from <http://www.seattle.gov/cityattorney/about-us/precinct-liaison-division/trespass-program>

Steffen, B., Carter, G.R., Martin, M., Pelletiere, D., Vandenbroucke, D. A., & Yao, Y. G. D. (2015). *Worst case housing needs: 2015 report to Congress*. Washington, DC: U.S. Department of Health and Urban Development.

Sullivan, V. (2015, January 5). Judge terminates receivership of Chester Housing Authority." Retrieved from <http://www.delcotimes.com/article/DC/20150105/NEWS/150109856>

Tekle-Johnson, A. (2009). In the zone: Sex offenders and the ten percent solution. *Iowa Law Review* 94, 607-63.

U.S. Department of Housing and Urban Development (2000). *In the crossfire: The impact of gun violence on public housing communities*. Washington, DC.

U.S. Department of Housing and Urban Development (2013). *A picture of subsidized households*. Retrieved from <http://www.huduser.gov/>

U.S. Department of Housing and Urban Development. (18 May 2015). HUD awards \$6 million to 29 public housing authorities to support emergency, safety, and security needs. [Press Release]. Retrieved from http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-058

Vale, L. (2002). *Reclaiming public housing: A half century of struggle in three public neighborhoods*. Cambridge, MA: Harvard University Press.

Vale, L.J. (2013) Overview: The meanings of public housing. In Carmon, N., & Fainstein, S. (Eds.), *Policy, planning, and people*. Philadelphia, PA: University of Pennsylvania Press.

Wilhelm, K.E. (2010). Freedom of movement at a standstill: Toward the establishment of a fundamental right to intrastate travel. *Boston U. Law Review*, 90, 2461-96.

Yin, R.K. (2009). *Case Study Research: Design and Methods*. Thousand Oaks, CA: Sage Publications

Yonkers FY 2010 Action Plan, Narrative Responses. v. 2.0. Retrieved from <http://www.cityofyonkers.com/home/showdocument?id=5450>

YPD Crime Statistics for 2012. (2013, January 24). Retrieved from <http://www.yonkersny.gov/live/public-safety/police-department/crime-statistics-2015/2012-crime-statistic-press-conference>

APPENDICES

- A. Yonkers Bar-out Policy
- B. Chester Trespass Policy (amendment to lease)
- C. Annapolis Trespass Policy (Original)
- D. Annapolis Trespass Policy (Revised)

MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS

NON-RESIDENT BAR-OUT POLICY

Policy Statement

The Municipal Housing Authority for the City Yonkers seeks to promote the safety, security and well-being of all MHACY residents, employees and other persons who have a legitimate purpose on MHACY property. Drug dealing, gang-related activities, disorderly and/or lewd conduct, and/or violent criminal activities all have a profoundly negative impact on public safety and the quality of life in MHACY housing. The enactment of this bar-out policy enables the MHACY to deny non-residents who have engaged in such serious criminal conduct access to MHACY property. This policy applies only to non-residents who are over the age of eighteen.

Criteria for Exclusion

Non-residents who engage in criminal activity on MHACY property shall be barred from MHACY for two or more years.

Any non-resident of the MHACY who engages in following conduct while present on MHACY property will be precluded from entering MHACY property upon service of a Bar-Out Notice for two years:

- Trespassing on MHACY property, as defined under the New York Penal Law.
- Entering MHACY property in violation of the express terms of an Order of Protection entered in favor of an MHACY tenant.
- Engaging in conduct that constitutes the crime of criminal possession of a weapon under the New York Penal Law
- Engaging in disorderly and/or obscene conduct, and/or public lewdness as defined under the New York Penal Law.

Any non-resident of the MHACY who engages in one of the following violent criminal activities while present on MHACY property will be precluded from entering MHACY property upon service of a Bar-Out Notice for five years:

- Engaging in assault, gang assault, and/or other threatening behavior that constitutes a felony under the New York Penal Law.

- Engaging in gang activity, which includes but is not limited to:
 1. Displaying symbols of gang affiliation for the purpose of evidencing gang membership and/or intimidating rival gangs, residents and/or MHACY employees.
 2. Gesturing for the purpose of intimidating rival gangs, residents and/or MHACY employees and/or to provoke a violent response in another person.

Any non-resident of the MHACY who engages in following conduct while present on MHACY property will be precluded from entering MHACY property upon service of a Bar-Out Notice for ten years:

- Possession or sale of a controlled substance which constitutes a felony under the New York Penal Law (herein referred to as “drug dealing”).

Any non-resident of the MHACY who engages in following conduct while present on MHACY property will be precluded from entering MHACY property upon service of a Bar-Out Notice for life:

- Committing one of the following violent criminal activities: homicide, incest, sexual misconduct against a child, and/or rape, as defined under the New York Penal Law.

Procedure

Upon notice to the MHACY from the Yonkers Police Department and/or any other law enforcement agency, that a non-resident has been arrested and/or convicted for drug dealing, gang-related activities, disorderly and/or lewd conduct, and/or other violent criminal activities on MHACY property, the MHACY shall issue a written Notice of Exclusion to the non-resident.

Content of the Notice of Exclusion: The Notice of Exclusion served upon the non-resident shall be dated and shall state (a) that he/she has been arrested and/or convicted of drug dealing, gang-related activities, disorderly and/or lewd conduct, and/or other violent criminal activities on MHACY property; (b) the date and approximate time of the illegal conduct; (c) that as a result of the illegal conduct, he/she is barred, effective immediately, from entering property owned by the MHACY, noting the time period in which the bar-out shall remain in effect; (d) that the non-resident’s appearance on MHACY property during the period of the bar-out shall result in the filing by the MHACY of a criminal complaint for trespass; (e) that the non-resident has a right to file an informal appeal of the MHACY’s determination to issue the Notice of Exclusion; and (f) that under the circumstances set forth in this policy, the non-resident may file an application for Special Access or Emergency Access. Additionally the Notice of Exclusion shall advise the non-resident that their name shall be published on the MHACY bar-out list that will be posted throughout MHACY property. The Notice of Exclusion may be issued by the MHACY’s

Informal Hearing Officer, the MHACY's Executive Director, and/or the Executive Director's designee.

Service of the Notice of Exclusion: The Notice of Exclusion shall be served upon the non-resident by personal service and/or by regular mail and certified mail, return receipt requested, addressed to the non-resident's last known address. In the event personal service is made, any employee and/or agent of the MHACY may effectuate the service. The MHACY shall maintain documentation evidencing the service of the Notice of Exclusion upon the non-resident. In the event the regular mail is not returned to the MHACY, then service upon the non-resident shall be presumed effectuated after 5 days have elapsed from the date of mailing. A non-resident's name may not be included on the MHACY Bar-Out List until such time as service is effectuated.

Publication of the Bar-Out List: The MHACY shall post in each building owned and operated by the Authority, and shall distribute to all residents, resident council members, and the Yonkers Police Department four (4) times per year, an official list of names of all persons who have been served with a Notice of Exclusion and the Bar-Out List shall include the effective and expiration dates of the bar-out. Notwithstanding the foregoing, the Bar-Out List shall be updated by the MHACY from time-to-time, as the Authority deems appropriate.

Appeal of the Notice of Exclusion: A non-resident who has been served with a Notice of Exclusion may appeal the exclusion by serving a written request for an informal hearing at any time during the exclusion period, addressed as follows:

MHACY Informal Hearing Officer
1511 Central Park Avenue
Yonkers, New York 10710

The non-resident may review the MHACY file prior to the Informal Hearing, and may attend the hearing with a representative of his/her choice. During the hearing, the non-resident may present any evidence relevant to the Notice of Exclusion.

Upon conclusion of the informal hearing, the MHACY Informal Hearing Officer shall issue a written decision that shall uphold the Notice of Exclusion; withdraw the Notice of Exclusion upon sufficient proof that the criminal charges levied against the non-resident have been dismissed; or, the Informal Hearing Officer may, at his or her sole discretion, withdraw the Notice of Exclusion if he/she concludes that there is a reasonable probability that the non-resident's future conduct would not be likely to affect adversely the health, safety or welfare of MHACY Residents and Employees.

To determine whether there is a reasonable probability that the non-resident's future conduct would not be likely to affect adversely the health, safety or welfare of MHACY Residents and Employees, the Informal Hearing Officer may consider:

- The seriousness of the offense(s);

- The frequency of the offense(s);
- When the offense(s) occurred;
- Evidence about the conduct underlying the offense;
- Evidence regarding the non-residents rehabilitation since the offense, including but not limited to (a) proof that the non-resident has enrolled in and remained in school for at least six months, and has compiled a positive school record; (b) proof that the non-resident has enrolled in and remained in a job-training program for at least six months, and has compiled a positive work record; (c) a letter from the prosecutor or sentencing judge that the non-resident has been rehabilitated; (d) such other evidence that the Informal Hearing Officer deems relevant and probative of the issues.

Request for Special Access: A non-resident who has been served with a Notice of Exclusion may file a Request for Special Access at any time during the exclusion period, addressed as follows:

MHACY Informal Hearing Officer
 1511 Central Park Avenue
 Yonkers, New York 10710

Absent special circumstances, such as a Court Order of Visitation, an application for Special Access must be made jointly by the non-resident and a lawful Resident of the MHACY (hereinafter referred to as an "Interested Resident"). The Interested Resident's signature must be notarized and the Interested Resident must list any members of his/her household who have ever been subject to a Notice of Exclusion.

Upon review of the Special Access application, the Informal Hearing Officer shall issue a written decision which shall either grant or deny the application. The application may be granted only upon one of the following circumstances:

- The non-resident is a caregiver for the Interested Resident (or other individual residing with the Interested Resident) who is infirm or disabled, and no reasonable alternative means of providing such care exists;
- The non-resident is a caregiver for his or her minor child or grandchild, who resides on MHACY property with an Interested Resident, and no reasonable alternative means of providing such care exists;
- The non-resident has parental visitation rights with respect to a child residing on MHACY property and it is necessary under the circumstances that such non-resident be allowed access to MHACY property in connection with such visitation; or
- Any other situation exists where it is necessary under the circumstances presented that such non-resident be allowed access to MHACY property and there is no reasonable alternative to allowing such access.

Where the non-resident's application for Special Access is granted, the Special Access shall be conditioned upon the following:

- The non-resident must proceed directly to and from the Interested Resident's apartment;
- The non-resident shall not enter any apartment other than the apartment of the Interested Resident;
- The non-resident shall not be permitted access to any common areas on MHACY property except for direct ingress and egress to the Interested Resident's apartment.

In the event that Special Access is granted to the non-resident, the MHACY shall immediately advise the Yonkers Police Department.

Where a non-resident violates the terms of a Special Access grant, the MHACY shall serve upon the non-resident a Notice of Revocation of Special Access in the same manner as a Notice of Exclusion is served under this policy. The Notice of Revocation of Special Access shall advise the non-resident (a) that the Special Access grant is revoked; (b) that he/she is barred, effective immediately, from entering property owned by the MHACY, and that the Notice of Exclusion previously served upon the him/her has been reinstated, noting the time period in which the bar-out shall remain in effect; and (c) that the non-resident's appearance on MHACY property during the period of the bar-out shall result in the filing by the MHACY of a criminal complaint for trespass.

Where the non-resident's application for Special Access is denied, the Notice of Exclusion shall remain in full force and effect, and the non-resident shall continue to be subject to arrest for trespass upon entering MHACY property. The Interested Resident may file a grievance under the MHACY Grievance Procedure in the event an application for Special Access is denied.

The non-resident and Interested Resident may file a new application for Special Access upon a denial of access, but only if there are materially changed circumstances that provide new grounds for an exemption.

Request for Emergency Access: In the event of an emergency requiring that the non-resident be allowed immediate access to MHACY property, the non-resident may make an oral application to the Informal Hearing Officer, the Executive Director and/or the Executive Director's designee, in person or by telephone during normal business hours. Upon consideration of the request, the non-resident may be granted temporary access to MHACY on such terms and conditions as deemed appropriate by the MHACY, or the application for emergency access may be denied, at the full and absolute discretion of the MHACY. In the event that Emergency Access is granted to the non-resident, the MHACY shall immediately advise the Yonkers Police Department.

TRESPASS POLICY

Attachment No. 3 of the Dwelling Lease

1. Purpose

The Chester Housing Authority, hereinafter referred to as the “CHA”, is aware of the problem its residents face with the unwanted presence of persons on, in or about the property of the CHA. Recognizing the seriousness of drug activity as well as other criminal activity, including loitering, vandalism, curfew and weapons violations, the Authority adopts the following policy in an effort to enhance the safety, health and well being of its residents and its property.

The goal of the following policy is to reduce criminal activity, which threatens the peace and tranquility desired for public housing and its residents. The following policy is to be implemented and carried out under the laws of the State of Pennsylvania and the municipality.

2. Definitions

- a. Police Department: Chester Housing Authority Police Department
- b. Policy: The CHA Trespass Policy
- c. Trespass: For the purpose of this Policy, under Pennsylvania Law 18 PA. CSA §3503 (b) and (b.1) trespass is defined as follows:
 - i. **Defiant Trespass**: A person commits an offense if, knowing that he is not licensed or privileged to do so, enters or remains in any place as to which notice against trespass is given.
 - ii. **Simple Trespass**: A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place for the purpose of:
 1. threatening or terrorizing the owner or occupant of the premises;
 2. starting or causing to be started any fire upon the premises;
 3. defacing or damaging the premises
- d. Banned Person: A person who has been prohibited from entering CHA Property in accordance with the Policy.
- e. CHA: The Chester Housing Authority.

- f. **CHA Property:** The properties owned and maintained by CHA. CHA Property is private property. CHA Property includes, but is not limited to, the buildings, and parks within the CHA communities, the common areas, and parking lots within the properties owned by CHA. Signs have been posted on CHA Property that clearly identify the property as private property.
3. **Application** – This Policy applies to all public housing developments owned and managed by CHA.
- 3.1 The following persons are **presumed to have a legitimate purpose for being on CHA property and are NOT subject to a Trespass Notice (“Notice”) barring them from CHA property, unless otherwise mandated by law, or terms of this Policy or another CHA policy:**
 - a. CHA residents and members of their household listed on the lease.
 - b. Invited guests of CHA residents or household members who are accessing the development of the inviting resident or household member and while doing so are not engaged in unlawful activity or a breach of the peace, or who have not been served with an enforceable court order prohibiting contact with a CHA Resident, employee, or contractor.
 - c. Persons who are currently employed by the CHA while engaged in lawful behavior.
 - d. Contractors to CHA and their employees while engaged in lawful behavior.
 - e. Service providers while engaged in lawful behavior.
 - f. Persons with express permission from CHA to be on CHA property and while engaged in lawful behavior.
 - g. Emergency fire, police, medical and utility personnel.
 - 3.2 All other persons **without legitimate business** on CHA property are subject to being barred from CHA property, including, but not limited to:
 - a. Individuals or groups of individuals who are engaged in unlawful activity including breach of the peace, criminal harassment, drug possession or sale, stalking, vandalism and domestic violence.
 - b. Individuals or groups whose conduct constitutes a disturbance of the peaceful and quiet enjoyment of residents or otherwise threatens the health, safety, and welfare of residents, their household members, CHA staff or other persons lawfully on the property.
 - c. Individuals or groups ordered, by any court of competent jurisdiction, not to enter onto CHA property or to remain away from a resident, household member, CHA staff member or other person lawfully on the property.
 - d. An individual or group who engage in any **illegal behavior involving firearms or other deadly weapons, including, but not limited to unlawful possession, discharge, concealment, display or use of a said firearm or deadly weapon.**

4. **Trespass Determination.** As determined by CHA's authorized staff or agent, a person who has engaged in activity as discussed in Section 3.2 of this Policy, shall be banned from entering CHA Property.

4.1 The person being banned may be notified orally or in writing by CHA's staff or agent.

4.2 Following CHA's determination to ban a person from CHA Property, a CHA Police Officer or agent will complete a Trespass Notice. CHA will make a reasonable effort, **but is not required**, to deliver the Notice to the Banned Person. The Notice shall be distributed as follows:

Copy 1:	Chester Housing Authority Police Department – Community Enforcement Department
Copy 2:	Chester City Police Department
Copy 3:	Chester Housing Authority - Housing Operations Department
Copy 4:	Banned individual

4.3 A photograph of the Banned Person (*if available*) may be maintained by CHA Police. The Notice shall serve as notification that the Banned Person shall not enter any CHA Property and that he/she may appeal CHA's determination in accordance with **Section 5** of this Policy.

4.4 In the event that the Banned Person is a juvenile, CHA will make a reasonable effort, but is not required, to deliver the original Notice to the Banned Person's parent or legal guardian.

4.5 CHA Police Officers shall make a reasonable effort to include the following information in the Trespass Letter:

- a) the full name and address of the offender;
- b) the date the Trespass Letter is delivered to the banned individual;
- c) the resident/non-resident status of the individual;
- d) the development or location at which the incident occurred;
- e) the signature of the Police Officer or designated staff person banning the individual;
- f) the date, time and place the person was encountered for the offense;
- g) the reason(s) for banning; and
- h) a description of the individual, to include such information as birth date, social security number, and driver's license or other special identification.

- 4.6 The names of all Banned Persons will be placed on CHA's Trespass/Banned List, which shall be updated quarterly or as often as determined by the Executive Director. The Trespass/Banned List shall be distributed to (1) the Chester Housing Authority Police Department (2) all law enforcement officers working as agents for CHA (3) all property managers and (4) residents through newsletters, information bulletin boards or other mailings. The Trespass/Banned List shall be posted at each of the public housing developments and at CHA's main office.
- 4.7 Residents and members of the household shall take all reasonable steps to exclude Banned Persons from CHA Property. Such reasonable steps include, but are not limited to, the resident notifying the CHA Police and/or the Property Manager if a Banned Person is seen on CHA Property or in/around the resident's dwelling unit. **If it is determined that a resident or member of the resident's household invites, facilitates or permits a Banned Person to enter CHA Property, the resident will be in violation of the dwelling lease and subject to immediate lease termination procedures.**
5. **Appeal Process** - The Banned Person may request a hearing to be removed from the CHA Trespass List as indicated below:
- 5.1 A request for an appeal of CHA's determination must be submitted to the Executive Director within three (3) days following issuance of the Notice. CHA will provide the grieving party with the date, time and place of the hearing within a reasonable amount of time. Should the grieving party fail to appear at the hearing, the determination of CHA shall be final.
- 5.2 The Hearing Officer shall be the Executive Director or his/her designee, who will review each appeal and conduct a hearing.
- 5.3 The Executive Director or his/her designee, will make a final determination that will be provided to the grieving party in writing. A copy of the final determination will also be delivered to the CHA Police Department and Property Manager of the development where the offensive activity had occurred.
- 5.4 If it is the determination of the Executive Director to remove the Banned Person from the Trespass List, the Executive Director may remove him/her from the Trespass List immediately or for a probationary period of one (1) year.

5.5 Following the expiration of the period in which a Banned Person may appeal CHA’s determination, the following is the time period a Banned Person will be prohibited from entering CHA property. Depending on the circumstances, and in the sole discretion of CHA, CHA may lengthen or shorten the following waiting periods:

<u>Offense</u>	<u>Time Period</u>
Criminal activity involving the use or threatened use of of a weapon or instrument	5 years
Drug related criminal activity on or off the property	5 years
Eviction from CHA property (One Strike Policy)	5 years
Verbal or physical confrontation with CHA residents, Employees, agents, contractors, or Law Enforcement Officers	5 years
Violence or threat of violence against CHA residents, employees, agents, contractors, or Law Enforcement Officers	5 years
Criminal activity that threatens the health, safety and right to peaceful enjoyment	5 years
Sex offense subject to lifetime registration	lifetime
Manufacture or production of methamphetamine on the premises of federally assisted housing	lifetime
Property damage in excess of \$300	2 years

5.6 In extenuating circumstances and for good cause shown, the Executive Director may permit Banned Persons to enter certain CHA Property under restrictive visitation conditions. Examples of extenuating circumstances include, but are not limited to, a Banned Person visiting his/her child or ailing family member who resides in CHA Property, assisting a family member with a move from CHA Property, etc. In the sole discretion of CHA, the Banned Person may be permitted to enter certain CHA Property during business hours, may be required to check in and out with the CHA Police Department or Property Management Office or other restrictive conditions as determined by CHA.

6. Removal from Ban List

Persons listed on the Trespass/Ban List may not be removed by anyone except in consultation with the Executive Director.

COMMON AREAS

The following rules and regulations apply to all property owned, leased, or managed by the Chester Housing Authority ("CHA").

As used in these rules:

- (a) **Common Area** means any part of a housing development that is not leased for the exclusive use and occupancy of a resident, his/her household members, and his/her guests and visitors, including any parking lot, park, playground, recreational area, sidewalk, courtyard, or yard (as defined below); and
- (b) **Yard** means the outside area adjacent to an apartment unit, including any patio or porch, which area:
 - (1) Is intended to serve as personal space for a resident of an apartment, his/her household members, and his/her guests and visitor and their guest, and
 - (2) Is generally bounded by other yard and sidewalks providing access to more than one apartment.

If any question arises concerning the boundaries of a resident's "yard" the property manager of the development will, upon request, identify the boundaries.

NO ONE MAY:

1. Enter CHA Property at any time unless he or she is:
 - A resident or household member whose name is on the **current** dwelling lease for a unit in the property
 - An employee, agent, contractor, or service provider of CHA
 - An invited guest of a resident or household member
2. Consume, carry, display any alcoholic beverage in any common area.
3. Enter or use any playground, recreational area, basketball court or park after curfew.
4. Congregate outdoors with others in any common area, except in the **rear yard of a resident who is present with the visiting person(s)**.
5. Stand, sit or walk on or across any electrical transformer, wall or fence.
6. Create a nuisance or otherwise unreasonably disturb the right to quiet enjoyment of the property, such as conduct that:

- Is loud or disorderly, including loud music from cars
 - Impedes vehicular or pedestrian traffic
 - Threatens or intimidates others
7. **Engage in any illegal activity.**

This attachment is hereby incorporated into and made a part of the Chester Housing Authority Dwelling Lease.

CHA Representative _____
(Signature) (Date)

(Print name and title)

Tenant _____
(Signature) (Date)

Appendix C. Annapolis Trespass Policy (original)

BANNING REGULATION

Purpose:

In order to maintain the level of quality in the lifestyles of residents within public housing communities served by the Housing Authority of the City Annapolis, procedures are necessary to ban and remove individuals who have been involved in or conduct criminal activity within or near public housing.

Policy:

It is the policy of the Housing Authority of the City of Annapolis to acquire information from residents, local agencies, the press, the court system and the local police department that verifies the presence of and information describing activity that adversely affects the quality of life of our residents. The Housing Authority of the City of Annapolis is dedicated to providing communities that are safe, drug and crime free, and conducive to creating an environment pleasant to live in. Criminal behavior and lifestyles will not be tolerated.

Residents:

Procedures for residents who engage in criminal activity are outlined in the procedures for lease termination and within the public housing lease. Residents cannot be banned until they are no longer housed (legally) within the community, i.e. through eviction, family removal or voluntary move.

- 1) Residents known to associate with a banned non-resident shall receive notice that the person is banned from Housing Authority property in the form of a letter from the Director of Community Safety. The letter will also state that pursuant to the resident's lease agreement, the resident member of the resident's household, shall not allow the person who has been excluded to be a guest of the resident in the Housing Authority Development.
- 2) If a banned non-resident comes on the Housing Authority Development with a resident who has received notice of the person's banned status, the resident will receive a lease violation. If the resident has not received notice, the resident will be provided notice and warned about future activities with the banned non-resident. Pursuant to the Banning Policies and Procedures, a resident receiving a lease violation for violating this regulation will have his or her historical file reviewed to determine the subsequent course of action.

Non-Residents:

Non-residents who are found to be detrimental to the overall quality of life for public housing residents may be banned. There are specific items that must be confirmed prior to issuing a banning letter:

- 1) The individual must not be a resident.
- 2) The individual must have completed the associated incidents on or near public housing property. Specifically, apartment units, public areas within the community, community centers and offices, recreation areas, streets and parking lots that lie within and adjacent to property lines, spaces dedicated to other agencies within communities; playgrounds, fields, woods and easements that lead to and from the communities. Also, other city owned property that is adjacent to public housing may be considered as "off" and should be reviewed by the Director of Community Safety. The events that may cause a person to be banned are as follows:
 - a. Any misdemeanor or infraction which disturbs the peaceful enjoyment of the development, including without limitation, illegal drug activity or violent criminal activity;
 - b. Destruction of either Housing Authority property or private property;
 - c. After warning, continue to interfere with the job responsibilities of a Housing Authority employee or vendor; and/or
 - d. After warning, continue to disturb other residents' peaceful enjoyment of the complex.
- 3) The individual must have completed criminal activity within the area described in section 2 that has been verified by the appropriate law enforcement agency.
- 4) Should each of the above three items be met, the Banning Notice will be prepared by the Director of Community Safety after verifying all information and a file created on the specific individual.
- 5) The Banning Notice must be issued and the individual "Duly Notified", which means that the notice must be hand delivered. This may be done only by a Housing Authority staff or Secondary Employment Police Officer.
- 6) The bottom section of the Banning Notice must be completed detailing the date, time and location of the delivery of the Notice, as well as signature of the individual delivering the Notice.
- 7) The Director of Community Safety keeps all original Banning Notices and Banning notices with pictures of the offenders in three ring binders in alphabetical order.

- 8) A list of all banned persons is distributed to all Housing Authority officials, Parole and Probation and law enforcement as appropriate. Also, a ban list is posted in various Housing Authority offices.

Removal from the Banning List

After a person has been on the banning list for a period of three years they may apply in writing to the Director of Community Safety to be removed from the list. The Director of Community Safety will review their record of abiding by the list and if there have been no trespassing, CDS, weapons or violent charges placed against the person during the banning period they will be considered for removal from the banning list provided the person was not incarcerated during this time period. If a banned person has violated the ban they must reapply at a later date. Once a person has been removed from the ban list and they engage in any criminal activity that would place them back on the ban list they are considered banned for life.

**BANNING POLICY OF THE
HOUSING AUTHORITY of THE CITY of ANNAPOLIS**

The Housing Authority of the City of Annapolis, hereinafter referred to as the "Authority," is aware of the problem its residents and Authority face with the unwanted presence of persons on, in or about the property of the Authority. Recognizing the seriousness of illegal drug activity as well as other criminal activity, the Authority adopts the following policy in an effort to enhance the safety, health, and well being of its residents and its property. The goal of the following policy is to reduce criminal activity involving drugs and other activity which threatens the peace and tranquility desired for public housing and its residents. The following policy is to be implemented and carried out under the laws of the State of Maryland and applicable laws, ordinances and regulations of the City of Annapolis.

- A. The Authority may cause a written banning notice to be issued to any nonresident for the reasons and periods specified below. The ban will be in effect for the specified period, except that a banned nonresident may apply to be removed from the ban list before the specified ban period ends, pursuant to Paragraph F.
1. **Time period of the ban: 1 Year.** Is charged with, or within the past six months has been charged with, engaging in criminal activity on housing authority property which is non-violent in nature (activity that is not likely to result in physical injury), and which causes no physical injury to another person provided that such charge(s) has not been resolved by a judgment of acquittal, a dismissal of the charge(s) or expungement following a conviction;
 2. **Time period of the ban: 3 Years:** Is charged with, or within the past six months has been charged with, engaging in criminal activity on housing authority property in which a deadly weapon was used or threatened to be used, or which activity resulted in physical injury to any person; provided that such charge(s) has not been resolved by a judgment of acquittal, a dismissal of the charge(s) or expungement following a conviction;
 3. **Time period of the ban: 3 Years:** Is charged with, or within the past twelve months has been charged with, engaging in drug related criminal activity on or within 300 feet of housing authority property provided that such charge(s) has not been resolved by a judgment of acquittal, a dismissal of the charge(s) or expungement following a conviction;
 4. **Time period of the ban: 3 Years:** Is charged with, or within the past six months has been charged with, engaging in violent criminal activity (activity that is likely to result in physical injury) on or within 300 feet of Housing Authority property provided that such charge(s) has not been resolved by a judgment of acquittal, a dismissal of the charge(s) or expungement following a conviction;

5. **Time period of the ban: Lifetime:** Is charged with the manufacture or production of methamphetamine on the premises of federally assisted housing provided that such charge(s) has not been resolved by a judgment of acquittal, a dismissal of the charge(s) or expungement following a conviction;
 6. **Time period of the ban: Lifetime:** Is subject to a lifetime registration requirement under the state sex offender registration program;
 7. **Banning for Misdemeanors:** The Authority will not impose a ban under this policy as the result of a misdemeanor charge or conviction of possession or consumption of alcohol, disorderly conduct that does not result in injury, failure to obey police, loitering, littering or similar "nuisance" offense as determined by the Housing Authority.
- B. A written notice of banning shall be issued to such person or persons by the Director of Community Safety or sworn officer of the Annapolis Police Department ("APD") acting as an agent of the Authority or such other employee(s) of the Authority designated by the Executive Director. A copy of the notice as issued shall be maintained by with the Director of Community Safety of the Authority or other appropriate official(s) of the Authority as may be designated by the Executive Director.
 - C. Any person who has received a notice of banning to leave the property under the provisions of this policy and who returns to the Authority property before the ban has been officially lifted in writing, shall be subject to arrest for criminal trespass as provided for in Section 6-403 of the Criminal Law Article of the Annotated Code and under applicable laws or ordinances of the City of Annapolis.
 - D. A copy of the notice, picture of the banned person, and related documents shall be maintained by the Housing Authority. The names of persons receiving the banning notice shall be supplied at least monthly to the local law enforcement agencies including but not limited to Annapolis Police Department, Parole and Probation for use in their official capacities. In the event that the charges underlying a banning notice are resolved by a judgment of acquittal, a dismissal of the charge(s) or expungement following a conviction, and the Authority is aware of such a disposition, the Authority will timely lift the banning notice within 30 days of notice thereof and immediately notify the APD thereof.
 - E. Invited Guests
 1. Upon receipt of information that a friend or relative has been and is banned under the Banning Policy, any HACA Resident named as such, and in good standing under his or her lease, (hereinafter referred to as the "Resident"), may designate (the "Designation") that person as an "Invited Guest". For the purposes of this paragraph, "good standing" means a Resident against whom

HACA has not obtained a judgment of possession permitting HACA to evict the Resident.

2. Designation. The Resident will make such Designation on a form available at the HACA main office. The Designation will require that the Resident:

- (i). provide the Resident's full legal name and address;
- (ii). provide the Invited Guest's full legal name and address;
- (iii). indicate the day(s) and time(s) that the Invited Guest is permitted to visit the Resident, or provide that the Invited Guest may visit on any date or at any time;
- (iv). take responsibility for the Invited Guest while the Invited Guest is on HACA property, and acknowledge that the terms of the Resident's lease may provide that Resident is responsible for the actions of the Invited Guest on HACA property;
- (v). if known to the Resident, provide the Invited Guest's social security number and birth date; and, if not known, agree to take reasonable steps to obtain and provide HACA with the Invited Guest's social security number or other further information for identification purposes upon written request should HACA be unable to identify the Invited Guest by name alone; and
- (vi). date and sign the form.

3. Eligibility. Individuals who have been banned pursuant to subsections 2, 4, 5, or 6 of Paragraph A of the Policy shall be ineligible for Designation as Invited Guests. Individuals who have been banned pursuant to subsection 3 of Paragraph A of this policy shall be ineligible for Designation as Invited Guests only if the "drug related criminal activity" for which they have been banned included a charge(s) of drug manufacture or sale or distribution and provided that such charge(s) has not been resolved by a judgment of acquittal, a dismissal of the charge(s), expungement following a conviction, or *nolle pros*. An individual whose Pass has been revoked shall be ineligible for Designation as an Invited Guest for a period of 6 months following the revocation.

4. Consideration. The Authority will review the completed Designation promptly. HACA will conduct a background check on the Invited Guest for eligibility; if HACA is unable complete the background check due to lack of identifying information, the Resident shall provide further identifying information within 5 days of request by HACA. If the Invited Guest is eligible for Designation as an Invited Guest, The Authority will issue a Pass to that person within seven days of the submission of the completed Designation to HACA, or seven days from the date of the provision of information permitting the completion of a

background check, whichever is later. A copy of the Pass will be issued to the Invited Guest, as well as the Resident.

5. Scope Of Pass. A Pass will provide the name and address of the Resident and shall be subject to the following Restrictions:

(i). the date(s) and time(s) on which the Designation permits the Invited Guest to visit the Resident or members of the Resident's household;

(ii). any other restrictions on the time, date, or manner during which the Invited Guest is permitted to visit the Resident or members of the Resident's household, including location(s) on HACA property, as indicated by the Resident.

(iii). unless the Pass has expired or been revoked, the Authority will not impose any restrictions on visits made by an Invited Guest unless so directed by the Resident. Notwithstanding anything to the contrary in this Agreement, nothing shall prohibit HACA from obtaining injunctive relief prohibiting any person from entering HACA property; such injunction will permit the individual to be placed on the Ban List and/or permit a Pass to be revoked.

6. Expiration. Passes issued to Invited Guests will remain valid for three (3) months and may be modified or revoked at any time by the request of the Resident. If, at any time within one (1) month of the expiration of a pass, the Resident notifies HACA in writing that he or she wishes to have a Pass renewed, then HACA will renew the Pass for an additional three (3) months. No later than fourteen (14) days before the expiration of a Pass, HACA will notify the Resident in writing of the date upon which the Pass will expire (the "Expiration Notification"). The Expiration Notification will include a clearly-marked section where the Resident may indicate that he or she wishes to renew the Pass. The Resident may renew the Pass for an additional three (3) months either by submitting a written request for renewal to HACA or by indicating that he or she would like to renew the pass in the appropriate section of the Expiration Notification and returning the Expiration Notification to HACA.

7. Revocation. HACA may revoke any Pass under the following circumstances:

(i). The Invited Guest is found on HACA property at a time, on a date, in a place, or in a manner not permitted by the Pass;

(ii). The Invited Guest is found on HACA property and fails to promptly provide accurate information concerning his name and address to a police officer or HACA employee or agent requesting identification;

(iii). The Invited Guest is found on HACA property and fails to promptly and accurately identify the Resident that he or she is visiting upon request of a police officer or HACA employee or agent;

(iv). The Invited Guest is charged with any criminal activity that is proper grounds for placing the individual on the Ban List, including any activity described in paragraph A of the Banning Policy.

A revocation revokes all Passes for the Invited Guest.

8. Entry Upon HACA property. Unless the Pass has expired or has been revoked, an Invited Guest will be free to enter HACA property, subject to the Restrictions designated in the terms of the Pass. Invited Guests will not be required to carry any pass or other article on their person in order to legally enter HACA property in accordance with the terms of the Pass. A copy of the Pass will be issued to the Invited Guest solely for the purpose of ensuring that he or she has been notified of its terms.

9. Notice. The Authority will provide the Annapolis Police Department ("the APD") and/or any other person or entity The Authority employs or directs to enforce the Banning Policy with a copy of the Banning Policy and information concerning the terms of any Passes outstanding at least once every month.

F. The Housing Authority will provide a complete list of persons who are at that time banned from HACA property under this policy to every HACA household at least once every month.

G. Removal from Ban List

A banned individual, or his or her representative, may request that the ban be lifted before its stated expiration date by submitting a written request to the Housing Authority. Said request must be accompanied by a signed and dated release of information statement (which may be obtained from the Authority) allowing the Housing Authority to check police reports. The Request must state the following:

- full name
- social security number
- date of birth
- date the banning notice was issued
- reason for the request

The Housing Authority will consider the circumstances surrounding each case on an individual basis. In making such determination, the Housing Authority will consider: (1) whether the activity for which the individual was banned is unlikely to occur again; (2) whether or not the individual will conduct themselves in a manner that does not detract from the safety, health, or well being of HACA residents and HACA property.

The banned nonresident should direct their application for removal to the Director of Safety. The Director of Safety's written decision will be mailed to the nonresident individual within ten (10) business days of receipt of the request. If the banned individual disagrees with the decision of the Director of Safety, a request for review must be mailed to the Executive Director within ten (10) business days of the Director of Safety's decision. The Executive Director's decision will be mailed to the individual within five (5) business days of receipt of the request. If the individual disagrees with the decision of the Executive Director, a request for review must be mailed to the Board of Commissioners within ten (10) business days of the Executive Director's decision.. If the individual disagrees with the decision of the Board, the individual may seek redress in the courts.

4594